



" convicted of wilful homicide, that he, or she, was desired by
 " the party slain to put him, or her, to death; and in the event
 " of the prisoner being convicted of the fact to the satisfaction
 " of the Nizamut Adawlut; and of their seeing no circum-
 " stances in the case which may render him, or her, a proper
 " object of mercy; they shall sentence him, or her, to suffer
 " death, whatever may be the fatwa of their law officers un-
 " der the Mahomedan law; which in this instance also, al-
 " though it withholds *Kiffas*, gives a full latitude to the ma-
 " gistrate in the discretionary punishment of *Tazier* or *Seccaful*;
 " and experience has shewn the necessity of inflicting the pu-
 " nishment for murder in such cases, to preserve the lives of
 " many from the effects of passion or revenge, aided (especially
 " in the province of Benares) by the erroneous prejudices of
 " superstition."

Re-enacted for
 ceded provin-
 ces by R. VIII,
 1803, § XVI.

It was also declared by Section IV, Regulation VIII,
 1799, (re-enacted for the ceded provinces by Section XVII,
 Regulation VIII, 1803,) that " if the fatwa of the law-offi-
 " cers of the Nizamut Adawlut declare any person, convicted
 " of wilful murder, not liable to suffer death, under the Ma-
 " homedan law, on the ground of one or more of his accom-
 " plices being exempted from *Kiffas*, under any of the cir-
 " cumstances recited in Sections II, and III, of this regulation,
 " or on any similar ground of exemption; the court of Niza-
 " mut Adawlut shall, notwithstanding such fatwa, sentence
 " the prisoner to suffer death; if in their judgment he be duly
 " convicted, and be not a proper object of mercy; and in all
 " cases, if the accomplice in a wilful murder, though not the
 " principal perpetrator of the murder, shall appear to the
 " Nizamut Adawlut fully convicted, and deserving of death,
 " they are authorized, under the discretion given by the Ma-
 " homedan law in such cases, to sentence the prisoner to suffer
 " death, whether the fatwa of their law officers declare the
 " same or otherwise."

Rule to pro-
 vide for cases
 of wilful mur-
 der, in which
 one or more of
 the accom-
 plices may be
 exempt from
Kiffas, or in
 which an ac-
 complice in
 the murder
 may appear
 & deserve of
 death. R. VIII,
 1799, § IV.

Re-enacted for
 ceded pro-
 vinces by R.
 VIII, 1803, §
 XVI.

Reference to the Mohammedan law concerning *Kutl-i-khatá*, or erroneous homicide, which makes no distinction between involuntary homicide in the prosecution of a lawful, or unlawful and murderous intention; though there is evident reason for distinguishing them.

UNDER what has been stated in the preceding section (p. 263) relative to *Kutl-i-khatá*, or erroneous homicide, it appears that a person deliberately intending to murder one individual, and accidentally killing another, is not, by the Mohammedan law, held liable to retaliation of death; and that no distinction is made between involuntary homicide, in the prosecution of a lawful intention; as for instance, shooting at a mark and accidentally killing a man; and involuntary homicide in the prosecution of an unlawful and murderous intention; such as shooting at a man with an intention to kill him, and by accident killing another man; or even killing the person intended to be murdered, if any accident intervene, such as the arrow or other instrument of death passing by the person aimed at, and killing him on a rebound; though the intention being in the first case innocent, in the two latter cases criminal, there is evident reason for distinguishing them; and on principles of public justice, which regards the detriment and danger to society from the commission of crimes, rather than the individual injury resulting from them, the homicide actually committed in prosecution of a deliberate intent to commit murder must be held justly liable to the punishment of murder. The same reasoning is equally applicable in cases of a like nature, where a person criminally intending to wound, maim, or otherwise do corporal injury to, one individual, may, in the prosecution of such criminal intention, accidentally wound, maim, or otherwise corporally injure another person. With a view therefore to provide for the due administration of justice in such cases, and to deter all persons from the prosecution of unlawful criminal designs, by warning them that they will be responsible for acts done by them in prosecution of such designs, the following rules were enacted by Sections II, III, IV, V, and VI, Regulation VIII, 1801, and re-enacted for the ceded provinces by the second and succeeding Clauses of Section X, Regulation VIII, 1803.

Same reasoning applicable to wounding, maiming, or otherwise injuring one person, in the prosecution of a criminal intent against another.

Rules enacted to provide for the due administration of justice in such cases.

VIII, 1801, II, III, IV, and VI.

re-enacted for the ceded provinces by the second and succeeding Clauses of Section X, Regulation VIII, 1803.

College of A N F W P 1st Apr. 1800

ELEMENTARY ANALYSIS

OF THE

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ENACTED BY THE

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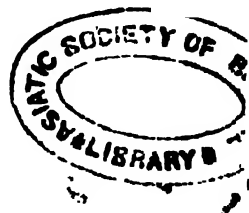
FOR THE

(1800)

CIVIL GOVERNMENT OF THE BRITISH TERRITORIES

UNDER THAT PRESIDENCY.

IN SIX PARTS,



VOL I.

~~555~~

COMPRISING THE FIRST AND SECOND PARTS, AND
A SUPPLEMENT TO THE FIRST PART;

OR

GENERAL LEGISLATIVE PROVISIONS; AND RULES FOR CIVIL AND
CRIMINAL JUSTICE, AND THE POLICE.

BY

JOHN HERBERT HARRINGTON,

PRESIDENT OF THE COUNCIL OF THE COLLEGE OF FORT WILLIAM;
AND LATE PROFESSOR, UNDER THAT INSTITUTION, OF THE
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NOTE.

THE first part of this Analysis having (as stated in the Note to page 212) included only the Regulations concerning civil justice passed to the end of July, 1805 ; and several rules of importance having been since enacted, whereby those before in force are materially altered ; especially with respect to civil process under Regulation II, 1806, and the jurisdiction of the zillah and city courts under Regulation XIII, 1808 ; it appears advisable, to add a Supplement, containing the substance of the Regulations for the administration of civil justice, which have been published to the end of 1808 ; to which period the regulations for criminal justice have also been stated. Those who are inclined to make one Volume of the First and Second Parts of this Analysis (as suggested in the Note to Page 579,) are therefore requested to wait until they receive the Supplement to the First Part, which will be prepared and printed without delay.

J. H. HARRINGTON.

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THE MOST NOBLE MARQUESS WELLESLEY, K. P.

Ec. Ec. Ec.

MY LORD,

THE following Elementary Analysis, of the laws and regulations enacted by the Governor General in Council at this Presidency, having been undertaken at your Lordship's express desire; and being designed for the use of the Students in the College of Fort William, which was founded by your Lordship, for the instruction of the junior Civil Servants of the Honorable Company, in the knowledge required for the discharge of their various and important duties, in the internal government of the British Empire in India; a dedication of the work to your Lordship is equally dictated by a sense of obligation and propriety; and by a voluntary impulse to offer an humble, but sincere, token of personal respect for your Lordship's eminent character, talents, and virtues.

I HAVE already joined my fellow servants of the Company, with the other British inhabitants of Calcutta, in an unanimous public acknowledgement of your Lordship's distinguished services, in advancement of the national interests and glory, during a memorable administration of seven eventful years. And it is not my present purpose to indulge a private feeling, by expressing the gratitude of an individual, for your Lordship's unmerited selection of him, to fill a high judicial situation; or for the distinction conferred upon him, by an honorary professorship in the first Collegiate Institution at this settlement; the foundation of which, (whether it be permanently fixed upon its present solid basis in India; or whether it be substantially removed to the mother country, with a view to the

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the more economical attainment of the same unquestionable ends of good policy ;) must remain a perpetual memorial of your Lordship's enlightened regard to the essential consequence of providing for the just, conciliating, and beneficial, government of the Asiatick possessions of Great Britain ; by instructing the public officers to be employed, in the languages, laws, and customs of it's inhabitants ; and by promoting, to the utmost, their competent qualification for the due execution of the arduous duties, and extensive trusts, committed to them.

BUT it will not, I hope, be deemed presumptuous, or unconnected with the subject of the accompanying Analysis, if I refer to it, as demonstrative of the wise, equitable, and benevolent principles, which have regulated your Lordship's intelligent and faithful application of the sacred deposit of legislative power, to confirm, strengthen, and diffuse, it's genuine and primary object ; an efficient and impartial administration of justice. It was your Lordship's good fortune to find, upon your accession to the government of Bengal, an established system of law and regulation, which had been introduced by MARQUESS CORNWALLIS ; and maintained, with an extension of it to the province of Benares, by LORD TEIGNMOUTH. But it was your Lordship's comprehensive discernment, which at once saw the full scope and tendency of that system. It was your Lordship's zealous desire, to render the British sovereignty of these provinces conducive to their prosperity, and to the security and happiness of their numerous inhabitants, which prompted various inquiries to ascertain the experienced sufficiency of the existing laws for the accomplishment of the politic and benignant purposes designed by them ; and it was your Lordship's transcendent merit, instead of innovating upon the system which had been established by a former Government, to direct your vigilant attention, with that of the public officers acting under your superintendence, to preserve, improve, and enlarge, the operation of the laws and regulations in force ; to provide, by every practicable means,

for

for their more effectual and upright administration; and to supply, as circumstances required, or experience suggested, those additions and amendments, of which no wisdom could foresee the necessity, or expediency, in the first instance.

THAT this is no compliment, offered upon insufficient grounds, will amply appear from the plain authentic statement, contained in the annexed sheets, of the laws and rules enacted, and of the courts of judicature established, for the distribution of civil justice, in the provinces of Bengal, Bahar, Orissa, (with Cuttack) and Benares; the territory ceded by the Nawab Vizeer and the Peshwa, and the conquered territory on each side of the Jumna; founded, throughout, upon the printed code of regulations which has been promulgated under the authoritative sanction of the Governor General in Council at this presidency. As this initial part of my analysis (including the notes added whilst the text was in the press) has been brought forward to the close of your Lordship's government; it is my intention, whenever the intermission of official duties may admit of my completing the succeeding parts, to comprise in them the whole of the regulations subsisting at the same period; and to reserve, for a concluding section, or for a future compilation, any additional legislative provisions which may be hereafter enacted.

THE work undertaken at your Lordship's recommendation, and printed, by direction, for the college under your Lordship's patronage, will thus exhibit, as far as my limited talents and qualifications enable me to represent it, a general view of the laws and regulations in force, at the commencement and in the course of your Lordship's government, for the internal administration of this valuable portion of the British Empire; comprehending a territory of more than two hundred thousand square miles; and a population, at the lowest estimate, more than twofold that of the United Kingdom in Europe. As such, I flatter myself that, however defective in
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the execution, it will not be altogether unacceptable to your Lordship; and with this impression, I have ventured to publish the first part of it, on the eve of your Lordship's departure from India, under the auspices of your illustrious name. Any deficiencies consequent to a first attempt will, I know, obtain your Lordship's liberal indulgence; and I have the fullest confidence that, if found to possess any degree of merit or utility, it will receive from your Lordship the approbation and protection, which have uniformly encouraged every well meant endeavour, for the benefit of the public service; and which I shall esteem the most honorable reward of my labours.

I am, MY LORD,

With the highest respect,

Your Lordship's faithful

And obliged Servant,

J. H. HARRINGTON.

Calcutta, July 31, 1805.

INTRODUCTION.

THE Author of the following attempt to facilitate the study and knowledge of the Laws and Regulations, enacted by the Governor General in Council of the British possessions in India, is conscious that he has little qualification for such an undertaking, except what he may have derived from official experience, in the course of nearly four and twenty years employment; formerly in the Revenue, and latterly in the Judicial Department, of the Honorable Company's Civil Service at this Presidency. In discharge of the obligations imposed by the Public Trusts committed to him in these Departments, it became his duty to inform himself of the letter, and, as far as lay in his power, of the principles, spirit, and intention, of the rules of conduct, which had been established for his guidance, or for that of the Officers acting under his control, in the administration of Justice, Civil and Criminal; in the establishment of an efficient Police; in the settlement and collection of the Public Revenue; in the maintenance of the rights of Proprietors and Farmers of Land, and of their Under-Tenants; and, generally, in the execution of all functions appertaining to the Judicial and Revenue Officers of this Government. He is sensible, however, that any practical knowledge of the existing Regulations, which he may have acquired by the opportunity thus afforded him, in common with many of his fellow Servants more capable of profiting by it, has not qualified him to expound the Laws, which have been enacted for the internal Government, of the

the extensive and populous Territories, now immediately subject to the Chief Seat of British Authority in India; or to enter upon a course of systematic instruction in the fundamental principles, and elementary provisions of those Laws, such as would prove satisfactory to others, or to himself. The observation of the Commentator on the Laws of England, applied to education for the Bar by practice only, without previous regular instruction in the rudiments of legal knowledge, is equally applicable to a person, deriving the whole of his acquaintance with the Laws of India from a practical observance of the operation of them. "If practice be the rule he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him. *Ita lex scripta est*, is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the Laws, and the natural foundations of Justice."

To remedy the defect thus described by Sir W. BLACKSTONE,* he proposed "the making Academical Education a previous step to the profession of the Common Law, and, at the same time, making the rudiments of the Law a part of Academical Education:" a suggestion obviously and forcibly apposite to the Laws of British India, and to the Institution expressly founded "for the better instruction of the Junior Civil Servants of the Honorable the English East India Company; in the important duties belonging to the several arduous Stations, to which the said Junior Civil Servants may be respectively destined, in the administration of Justice, and in the general Government of the British Empire in India."†

* In his excellent Introductory Discourse on the Study of the Law, page 30.

† Title of Regulation IX, 1800.

BUT it is further remarked by the Vinerian Professor of the Laws of England, who addressed the University of Oxford, and inculcated the study of those Laws in that University, that the "Sciences are of a sociable disposition, and flourish best in the neighbourhood of each other; nor is there any branch of learning, but may be helped and improved by assistances drawn from other arts. If therefore the Student in our Laws hath formed both his sentiments and style by perusal and imitation of the purest *Classical* writers, amongst whom the historians and orators will best deserve his regard; if he can reason with precision and separate argument from fallacy, by the clear simple rules of pure unsophisticated *logic*; if he can fix his attention, and steadily pursue truth through the most intricate deduction, by the use of *Mathematical* demonstrations; if he has enlarged his conceptions of nature and art by a view of the several branches of genuine *experimental philosophy*; if he has impressed on his mind the sound maxims of the *law of nature*, the best and most authentic foundation of human Laws; if, lastly, he has contemplated those maxims reduced to a practical system in the *laws of Imperial Rome*; if he has done this, or any part of it, a Student thus qualified may enter upon the study of the Law with incredible advantage and reputation."

It was, in like manner, the intention of the Noble Founder of the College of Fort William, as stated in his discourse at the late annual Meeting for the distribution of Prizes and Honorary Rewards*, "to have provided sufficient means of instruction for the Students in the principles of general jurisprudence, and of the Law of Nations; connecting that course of study with the principles of the Mahomedan and Hindoo Law; and with those of the wise and salutary code

* Held before His Excellency MARQUESS WELLESLEY, as Visitor of the College, on the 11th February, 1805.

“ of Laws, introduced by that great and worthy Statesman, the
 “ MARQUESS CORNWALLIS, for the administration of these Pro-
 “ vinces ; and improved and extended by succeeding Govern-
 “ ments, with the aid of the talents, knowledge and virtues
 “ of Sir GEORGE BARLOW.” But it is much to be regretted
 that circumstances have prevented the institution of a regular
 course of Lectures on the general principles of Jurisprudence,
 and of the Law of Nations. The suspension of this part of
 the Original Plan for the College necessarily precludes,
 at present, any attempt to connect the study of the
 several local codes with that of general Law ; except, as re-
 commended in the discourse referred to, by the private pe-
 rusal of the most approved elementary works upon the Laws
 of Nature, and of Nations ; a knowledge of which “ will prove
 “ of the utmost advantage in every department of this Ser-
 “ vice. To those destined for the Judicial Department the
 “ necessity of such a course of study is obvious and incon-
 “ trovertible. But in every department of the Service, the
 “ knowledge of the leading maxims of general Law will tend
 “ to secure a due observance not only of the Regulations of
 “ the Government ; but of the principles of universal justice
 “ and equity towards every class of our numerous and va-
 “ rious Subjects, and of all the Native Inhabitants of India.”

DIVESTED from this part of the original object, co-extensive
 with the general views of the great Personage, who founded
 a Collegiate Institution at this Presidency, for the political and
 benevolent purposes set forth in the preamble to the Regula-
 tion which established it, the Professor, intended by the rules
 for this Institution, of the Laws and Regulations enacted for
 the Civil Government of the British Territories in India,
 would still have an important duty to perform, in delivering
 a regular course of Lectures, on the principles and various
 provisions of this already voluminous, and yearly increasing
 Code ; the general objects of which, to be explained and
 developed

developed by such a course, are, as expressed in the Visitor's Discourse before mentioned, "the due distribution of the
 " Legislative, Executive, and Judicial Authorities of the State ;
 " the establishment of an impartial administration of Justice,
 " according to the existing Laws ; and the provision of gra-
 " dual means for the improvement of those Laws." But the daily occupation of indispensable official duties, as well as an unfeigned sense of inability to do justice to the functions of a public Lecturer upon the Regulations, would not admit of this office being undertaken, by the person who has been unexpectedly honored with the station of " Professor of
 " the Laws and Regulations of the British Government in
 " India." At the same time, his having been distinguished by a selection, which he could not but esteem highly flattering to him, added to an earnest desire of contributing any aid in his power to promote the objects of an excellent public Institution, made him anxious to devise some practicable means of promoting the study of the Regulations in the College of Fort William ; and after consideration of the subject, during a short intermission of Judicial duties, the following Plan of an Elementary Analysis, of the Laws and Regulations enacted by the Governor General in Council, designed for the use and assistance of the Junior Civil Servants of the Company, in acquiring a competent knowledge of those Regulations, before they enter upon the Public Service, was submitted to His Excellency the Patron and Visitor of the College ; who having been pleased to honour it with his approbation, it is now, at his desire, commenced ; and (*favente Deo*) will be gradually completed, as occasional leisure from official avocations may admit. It is necessary to premise however, that the Plan only, as here stated, has been seen and approved by the Governor General ; that the Work itself has not been submitted for the sanction of Government ; and consequently that it is not to be considered official, or bearing any authority beyond what it may be found to merit
 . from

from its correspondence with the Public Regulations to which it refers.

THE three principal Branches of the Public Administration, committed to the Agency of the East India Company's Servants at this Presidency, (exclusive of the Political and Diplomatic, which being distinct from the internal Government, and depending more immediately upon the Governor General, have not been provided for by any Regulation) are the Judicial, Revenue, and Commercial. This Analysis is therefore divided into Parts, having reference to each of those Departments; and as the prescribed period of study in the College of Fort William is three years, and two Public Examinations are directed to be holden annually*; the entire Work is meant to consist of Six Parts, in the following order.

PARTS I, and II, to have reference to the Judicial Department, Civil and Criminal; and to include (besides the general Legislative Provisions upon which the present Code of Regulations is founded) a concise elementary statement of the principal Rules which have been enacted for the administration of Civil and Criminal Justice, and for the Police; or for objects connected therewith; the general principles upon which such Rules appear to have been framed; and any material alterations of, or additions to, the original Rules, which have taken place under Regulations subsequently enacted.

PARTS III, and IV, to have reference to the Revenue Department; and to contain a similar Statement and Explanation of the Regulations passed for the Settlement and Collection of the several branches of the Public Revenue; for defining the powers and duties of the Officers employed in the Revenue Department; for securing the rights and tenures of the Proprietors and Tenants of Land; for enabling Landhol-

* Vide Sections XVIII, and XXIII, Regulation IX, 1800.

ders and Farmers to realize their Rents with punctuality; and generally for all objects connected with the administration of the Public Revenue; or the Land Tenures and Rents of the Country.

PART V. To refer to the Commercial Department; and to include a like specification of the rules established for the provision of the Company's Investment; or for the guidance of the Officers employed in the Commercial Department; for the manufacture and sale of Salt and Opium; or for the regulation and collection of the Customs; with such comment upon these subjects respectively, as may appear requisite, to explain the principles on which the existing provisions regarding them have been judged expedient.

PART VI. To be Miscellaneous; relating to all matters of importance in the Regulations, which shall not have been included in the preceding Parts; and to be accompanied with a similar illustration, as far as necessary, of the reasons of justice, or policy, which appear to have dictated the provisions made for them.

SUCH deficiencies, as may occur in the first execution of this plan, will be supplied in a future improved Analysis; if the work should be found to answer the purpose intended by it. In the mean time, it is hoped, that due allowance will be made for the imperfections of a first attempt, undertaken, on the spur of the occasion, amidst the constant avocations of high and arduous public duties, and without the advantages usually possessed, in a professional education, and the aid of antecedent works of a similar nature. The Author of this humble attempt to illustrate, and advance the knowledge of, the Laws of the British Empire in India, has indeed before him the *Commentaries on the Laws of England*; to which he has already referred, and in which the province

of

of an academical Expounder of the Laws is thus, in part, described. " He should consider his course as a General Map of the Law, marking out the shape of the country, its connexions and boundaries, its greater divisions, and principal cities. It is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet. His attention should be engaged, like that of the readers in FORTESCUE's *Inns of Chancery*, in tracing out the originals, and as it were the Elements of the Law." But it must be manifest to every person who has examined the Regulations of the British Government in India, that, however excellent in their nature, and admirably adapted, as they are, for the objects intended by them; the matter of the greater part of them cannot, as a science, be brought in comparison with the Laws of England. By far the larger proportion of them contain rules of conduct, for the public Officers employed in the several Departments of the Civil Service; which, however necessary to be known by the persons to be employed in this service, and therefore, with the utmost propriety, made part of the studies which are to qualify the junior Civil Servants of the Company for the discharge of their future duties, could not perhaps, with the advantage of superior abilities, general knowledge, and sufficient leisure for the purpose, be embodied in a course of lectures, that would admit of the most distant imitation of the elegant, comprehensive, instructive work of BLACKSTONE; which, as remarked by his Editor, now, " forms an essential part of every Gentleman's library;" and from its lucid arrangement, pure language, and clear intelligible explanation of each distinct subject, is calculated to yield equal pleasure and improvement.

THE orderly perusal, and attentive study, of the Regulations themselves, must be the principal means of acquiring an accurate knowledge of them. The sole aim and scope of this Analysis, are, to assist such perusal; to facilitate such study;

and

and by the aid so given, to promote the attainment of a more perfect knowledge of the Code of Laws, administered by the Servants of the East India Company, (through whose mediation they are also the public Officers of the State,) in this extensive and valuable portion of the British Empire.

To the Students of the College of Fort William, it cannot be requisite to add any argument, advice, or encouragement, to convince them of the necessity of acquiring a correct knowledge of the Laws and Regulations in force at this Presidency, for the purpose of enabling them to discharge their future duties in the Public Service; to persuade them of the satisfaction, credit, and advancement, which must attend their possessing this qualification, in addition to the other means furnished by the College, of rendering themselves competent and distinguished Public Officers; or to stimulate their application to this course of study, by the prospect of immediate advantage and distinction, to those who shall pursue it with diligence and success; such as shall entitle them to the rewards and honors promised, in the late discourse from the Visitor, to “ those Students who shall appear at the Examinations to have obtained eminent knowledge of the Laws and Regulations, which they are destined to administer in their several stations, to the people of these extensive Provinces.” The discourse referred to, which every Student, present and future, would do well to impress upon his memory, contains all that could be said, with effect, upon these topics; and the following quotation from it, comprising the most honorable testimony to the real merits of the Code of Regulations, which form the subject of the subsequent Analysis, will afford a suitable conclusion to these introductory remarks. “ Subject to the common imperfection of every human Institution, this system of Laws is approved by practical experience, (the surest test of human Legislation,) and contains an active principle of continual revision, which affords the best security for progressive

“ gressive amendment. It is not the effusion of vain theory,
“ issuing from speculative principles, and directed to visionary
“ objects of impracticable perfection; but the solid work of
“ plain, deliberate, practical benevolence; the legitimate
“ offspring of genuine wisdom, and pure virtue. The excel-
“ lence of the general spirit of these Laws is attested by the
“ noblest proof of just, wise, and honest Government; by the
“ restoration of happiness, tranquillity and security, to an op-
“ pressed and suffering people; and by the revival of agricul-
“ ture, commerce, manufacture, and general opulence, in a
“ declining and impoverished Country.”



FIRST PART.

SECTION I.

GENERAL LEGISLATIVE PROVISIONS.

THE system of law and regulation, distinguished by the high and just encomium of His Excellency the present Governor General, who has considerably added to it, as well as extended it to the ceded and conquered provinces, which have been annexed to the British Empire during the splendid period of his government, owes its origin and foundation to the political wisdom, justice, and humanity, of the MARQUESS CORNWALLIS; whose exalted character will be alike perpetuated, by his glorious achievements in arms; by a life devoted to the interests and honor of his country; and by this memorial of his able, virtuous, and beneficent administration in India.

Origin of the
existing code of
Bengal Regulations.

PREVIOUSLY to the year 1793, the territorial possessions of the East India Company were without a general code of British laws and regulations. Many rules and orders were indeed passed by successive governments, (from the appointment of Mr. HASTINGS to be Governor of Bengal in 1772,) for the administration of justice, the collection of revenue, and other objects of a public nature. During the preceding

State of rules
and orders in
force before the
year 1793.

twelve years some regulations had also been printed, with translations in the country languages: but others still remained in manuscript; and those printed were, for the most part, on detached papers; without any prescribed form, or order; and consequently not easily referred to, even by the officers of government; much less by the people at large; who had no means of procuring them in a collective state; or of becoming acquainted with such of them as had not been promulgated in the current languages.

Imperfect system of municipal law in consequence.

A PRIMARY and essential duty of every just government towards its subjects, that of publishing and enforcing an equitable system of law, adapted to their actual condition and circumstances, and calculated to protect them in the secure enjoyment of their rights, natural and acquired; "a rule of civil conduct, commanding what is right, and prohibiting what is wrong;" as municipal law is defined and explained by BLACKSTONE;* or as CICERO has expressed it, "*Sanctio justa, jubens honesta, et prohibens contraria*;" † was thus in a great degree omitted, or imperfectly performed, towards the natives of an extensive territory; which, by cession or conquest, had, through the chartered agency of the East India Company, become subject to the crown and sovereignty of Great Britain.

Ascribable to circumstances which have attended the establishment of the British Empire in these Provinces.

THIS will not appear extraordinary if the gradual establishment of the British authority in these territories be adverted to. From the year 1640, when two ships from England to Bengal opened the trade of the London East India Company to this part of India, under a patent for exemption from customs, obtained from the Emperor SHAH JAHAN ‡; until the year 1707, when Calcutta was declared a Presidency, account-

The Company's factories in

* See BLACKSTONE's second Introductory Section, on "the nature of Laws in general."

† II PHILIP. 12, quoted also in BLACKSTONE, B. I. C. 1.

‡ By a Surgeon, named BOUGHTON, sent to attend the Emperor's daughter, from Surat. Vide ORME, V. 2, p. 8.

able only to the Direction in England * ; the Company's factories, first at Hooghly, afterwards in Calcutta, and its adjacent villages, Sootanutty and Govindpoor, (the taloocdary right to which, subject to an annual revenue of 1195 rupees, the prince ÂZEEM-OO-SHA'N, grandson of AU'RUNGZEB, and Soobahdar of Bengal, Behar, and Orissa, allowed the Company's agents to purchase in the year 1698, †) were dependent upon the presidency of Madras; where the Company had a fort and garrison, which they had not been permitted to maintain in Bengal. Their transactions during this period were entirely commercial; and though the United Company, in the year 1717 ‡, obtained a firman from the Emperor FURUKHSEER, granting them, besides privileges of trade, permission to purchase the taloocdary of thirty-eight additional villages, contiguous to the three before held by them, subject to an annual revenue of 8121 Rupees; (which grant was frustrated by the influence and opposition of the Soobahdar JÂFUR KHA'N;) no independent authority was thereby conveyed to them; nor does any appear to have been claimed under it; or under the *hust-ool-hookms* || which were issued by the king's minister in conformity with it.

General dependent upon the Madras Presidency till 1707.

Nature of Firman granted by the Emperor of Hindoostan in 1717.

THE Treaty with SURAJ-OO-DOULAH, in February 1757, after the recapture of Calcutta, by the fourth article of which the Company were " allowed to fortify Calcutta in such man-

Independency of the Company's Settlement at Calcutta, established by the Treaty with

* ORME, V. 2, p. 18.

† ORME, V. 2, p. 17.

‡ Through the embassy of Messrs. SURMAN and STEPHENSON; accompanied by an Armenian merchant, named SURHAD, and another surgeon Mr. HAMILTON, whose medical assistance to the Emperor promoted the object of their embassy. See ORME, Vol. II, page 19, &c. and a copy and translation of the firman granted by FURUKHSEER, in the Appendix to " BOLTA on India Affairs."

|| Corresponding grants, literally according to order. Translations of them, and of the firman, are annexed to the first report of the select committee, appointed by the House of Commons in 1772, to enquire into the nature, state, and condition of the East India Company and of the British affairs in the East Indies. The reports of this committee, and of the committee of secrecy appointed in the following year, contain much authentic and valuable information respecting the acquisition and early administration of these provinces, not readily to be found elsewhere.

SURAJ-OO-DOU-
LAH, in 1757.

And Provinces
of Bengal, Be-
har, and Orissa,
virtually subju-
gated to the So-
vereignty of
Great Britain by
the battle of
Plassey, and its
consequences.

But not ac-
knowledgeed by
the previous
Treaty with Jā-
fur Aly Khān.

Districts of
Burdwan, Mid-
napore, and
Chittagong, &c.

“ ner as they might esteem proper,” and by the fifth article of which it was stipulated, “ that siccas be coined at Alinagur (Calcutta) in the same manner as at Moorshedabad;” concluding with a “ promise in behalf of the English nation, and of the English Company, that from henceforth all hostilities shall cease in Bengal, and the English will always remain in peace and friendship with the Nawāb, as long as these articles are kept in force, and remain unviolated *;” may be considered to have established the independency of the Company’s settlement at Calcutta. And the victory gained at the memorable battle of Plassey, on the 23d June of the same year, with the consequent elevation of JĀFUR ĀLY KHĀN to the government of Bengal, Bahar, and Orissa, by Colonel CLIVE, and the British army under his command, must be deemed a virtual subjugation of those provinces to the arms and sovereignty of Great Britain. In the previous treaty however, which had been entered into with JĀFUR ĀLY KHĀN †, the cession of the French factories, with an extension of the Company’s zemindary, six hundred yards without the ditch of Calcutta, and to the land lying south of Calcutta as far as Culpce, had alone been stipulated for; besides a confirmation of the former agreement with SURAJ-OO-DOU’LAH, and a consideration for the public and private property plundered by him at the capture of Calcutta in 1756; with the further conditions, that whenever the Nawāb should demand the assistance of the English he should be at the charge of maintaining them; and that he should not erect any new fortifications below Hooghly, near the river Ganges.

IN the treaty concluded with the Nawāb MEER MOHUMMUD CA’SIM KHĀN, on the 27th September 1760, it was agreed, that

* A translation of this treaty is inserted in the appendix to “VAREL’S State of Bengal,” and in other publications.

† On the 4th June 1757. The work mentioned in the preceding note contains a translation of this treaty also.

the *Nadabut* * of the Soobahdary of Bengal, Bahar, and Orissa, should be conferred upon him; and that he should succeed JĀFUR ĀLY-KHĀ'N in the government; that the English army should be ready to assist him in the management of all affairs, and that the lands of the chuklahs (districts) of Burdwan, Midnapore, and Chittagong, should be assigned for all charges of the Company, and the army, including provisions for the field. The nature of this assignment is further explained in the *fannuds* from the Soobahdar, wherein the above districts are stated to be granted to the English Company for the maintenance of a body of troops, to be entertained for the protection of the royal dominions; and the landholders, tenants, and public officers, are required to attend and pay the stated revenues, to the persons appointed by the English Company; and implicitly submit in all things to their authority. This therefore was a full and complete cession of the three districts specified; and in the treaty with JĀFUR ĀLY KHĀ'N, for his reinstatement, dated the 10th day of July 1763†, he “granted and confirmed to the Company, for defraying the expences of their troops, the chuklahs of Burdwan, Midnapore, and Chittagong which were before ceded for the same purpose.”

dated by Calim
Āly Khān, in
1763.

And cession
confirmed by
treaty with Jā-
fur Āly Khān,
in 1763.

AFTER the expulsion of CĀSIM ĀLY KHĀ'N, and the decisive battle of Buxar on the 23d October 1764, which, by the defeat of SHOOJĀĀ-OO-DOULAH, Soobahdar of Oud, finally established the British power to the banks of the Carannassā; and placed under its protection the unfortunate SHĀH ĀĀLUM, nominal successor to the throne of Delhy; the Dewany of Bengal, Bahar, and Orissa, including the administra-

British Power
finally established
by the battle
of Buxar

Dewany grant
obtained from
the King, Shāh
Ālum, in 1764.

* Station of Deputy. Translations of the treaty, and of the *fannuds* issued in pursuance of it, will be found in the appendix to the treatise before mentioned. The *mustud* of the Soobah being afterwards abdicated by JĀFUR ĀLY KHĀ'N, MĒER MOHUMMUD CĀSIM, otherwise called CĀSIM ĀLY KHĀ'N, was raised to it, by Mr. VANSITTART and Colonel CALLELDON, on the 20th October 1769.

† See the Appendix before noticed.

tion of the public revenue, and of civil justice, with the whole of the powers exercised by the Soobah Dewan, under the Mōgul constitution; and in this instance, the further special privilege of retaining the surplus revenue of the above provinces, after remitting the sum of twenty-six lacks of rupees per annum to the royal treasury, and providing for the expences of the Nizamut; was granted, as a free gift and ultumgha*, to the Company, by firmans from the King dated the 12th August 1765. A firman was also granted, at the same time, for the chuklahs of Burdwan, Midnapore, and Chittagong, ceded by CĀSIM ĀLY KHA'N; and for the twenty-four pergunnahs, of which the zemindarry right had been granted by JĀFUR ĀLY KHA'N; confirming them to the Company, as a free gift and ultumgha, in perpetuity. The Nuwāb NUJUM-OO-DOU'LAH, (who, on the death of his father JĀFUR ĀLY KHA'N in February 1765, had succeeded to the Soobahdarry of Bengal, Bahar and Orissa, under an agreement† to commit the chief management of all affairs to a Naib Soobahdar, appointed with the advice of the Governor and Council; as well as to appoint and dismiss all officers employed in the collection of the revenues, with the approbation of the Governor and Council;) by a further agreement, bearing date the 30th September 1765, acknowledged the King's grant of the Dewany to the Company; and agreed to accept the annual sum of sicca rupees 53,86,131 as an adequate allowance for the support of the Nizamut, viz. rupees 17,78,854 for his own household expences, servants, &c. and the remaining 36,07,277 for the maintenance of such horses, sepoy, peons, burkundazes, &c. as might be thought necessary for his sewary and the

With confirmation of former cession and grant from the Soobahdars.

Agreement with Nujum-oo-Doulah, in 1765.

* A royal grant in perpetuity, under the Emperor's seal, from which its name is derived. Translations of the firmans issued for the three provinces, separately and collectively; for the districts ceded by CĀSIM ĀLY KHA'N; and for the zemindarry of the twenty-four pergunnahs obtained by the first treaty with JĀFUR ĀLY KHA'N; are included in VERNET'S appendix; as well as in the appendix to the first report of the select committee, 1773.

† Executed on the 25th February 1765. See translations of this, and of his further agreement in the same year, No. 52 and 60, in VERNET'S appendix; also in the appendix to the first report of the select committee, 1773.

support of his dignity; should such an expence (the amount of which, not exceeding the above sum, to be disbursed through the Naib chosen by the English government;) be hereafter found requisite.

FROM this period the Nazim of Bengal, though, from motives of justice and expediency, allowed to retain the name, and in some measure the dignities of his office, can be regarded only as a pensioner of state. The civil and military power of the country; with the resources for maintaining it, were transferred to the East India Company; and through their means, to the British Empire*. It was not however judged advisable, either by the local government, or by the Court of Directors, and perhaps was not practicable in the actual state of the Company's service, at the time of their acquiring the Dewany, to vest the immediate administration of the revenue, or of civil and criminal justice, in European officers †. A resident at the Durbar, who inspected the management of the Naib Dewan, MOHUMMUD RUZÁ KHÁN, and his coadjutors, DOOLUBRAM and JUGUT SEET, at Moorshedabad; and the chief of Patna, who superintended the collections of the province of Bahar, under the immediate management of SHITÁB RÁY; maintained an imperfect control, for five years, over the civil administration of the districts included in the Dewany grant; whilst the zemindary lands of Calcutta, and the twenty-four Pergunnahs, and the ceded districts of Burd-

The Nazim of Bengal, a state pensioner, only from this period.

The civil and military power transferred to the East India Company, and to the British Empire.

Native administration continued, under an imperfect European control, from 1765 to 1772.

* That the sovereignty of the British crown and legislature extends to all acquisitions made by the East India Company, has never been questioned; and it has been determined by the House of Commons that all acquisitions, territories &c. made by arms, or by treaty, by "the subjects of the realm, do, of right, belong to the State." But this decision does not affect the legal acknowledged title of the Company to all proprietary rights acquired by purchase, or by any other lawful means, except by arms or treaty, under their perpetual incorporation by Charter, founded upon Acts of Parliament. Vide "Plans for the Government and Trade of Great Britain in the East Indies." P. 198, &c.

† See the reasons fully detailed in the correspondence between the Honorable Court of Directors, and the President and Council, or Select Committee, at Fort William; contained in the reports of the House of Commons already referred to: also in the first Chapter of VERELST's Narrative.

wan, Midnapore, and Chittagong, were superintended by the covenanted servants of the Company. In 1770, European supervisors were appointed, with powers of controlling the native officers employed in collecting the revenue, or administering justice, in different parts of the country; and councils, with superior authority, were at the same time established at Moorshedabad and Patna, subordinate to the Supreme Council at the Presidency. It was not however till the year 1772, when, in consequence of the determination of the Court of Directors *, “to stand forth as Dewan, and by the “agency of the Company’s servants to take upon themselves “the entire care and management of the revenues,” the Office of Naib Dewan was abolished; that the efficient administration of the internal Government of these provinces was committed to British agency. No time was then lost in adopting measures to correct abuses; in providing against undue exactions; and in making such arrangements as circumstances admitted, for a more regular distribution of justice. The committee of circuit, headed by the Governor (Mr. HASTINGS,) digested a plan for this purpose; the rules of which were stated to have been framed with a view to adapt them “to “the manners and understanding of the people, and exigencies “of the country, adhering, as closely as possible, to their ancient usages and institutions †;” and which, with the regulations subsequently passed, for the establishment and jurisdiction of courts of civil justice, will be more particularly noticed in the next section of this analysis.

Office of Naib Dewan abolished, under orders from the Court of Directors; and the Company’s servants employed in executing the Dewany functions.

Measures adopted, and judicial arrangements made, in consequence.

Acts of the British Legislature, which relate to the subject of this section.

In the mean time it is necessary to mention concisely the acts of the British Legislature, which have an immediate relation to the subject of the present section; commencing with the regulating act of 1774, which was founded on the inquiry of

* Communicated in their letter to the President and Council at Fort William, dated 28th August 1771. Vide Fifth Report of the Committee of Secrecy, 1772.

† Vide Appendix No. 2, to the Fifth Report of the Committee of Secrecy, 1773

Parliament, relative to the management of the affairs of the East India Company, made in the two preceding years.

By this Statute (13 GEORGE III, Chapter LXIII,) it was enacted, " that for the government of the presidency of Fort William in Bengal, there should be appointed a Governor General, and four Counsellors; and that the whole civil and military government of the said presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bahar, and Orissa, shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the United Company, be vested in the said Governor General and Council; in like manner, to all intents and purposes whatsoever, as the same are, or at any time heretofore might have been, exercised by the President and Council, or select Committee, in the said kingdoms." The Governor General and Council were further invested with the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen; under certain restrictions; and the King was empowered " to erect and establish a Supreme Court of Judicature at Fort William, to consist of a Chief Justice and three other Judges, being Barristers of England or Ireland of not less than five years standing;" instead of the Mayor's Court, established by Letters Patent from His Majesty GEORGE I; which had been found insufficient for the due administration of justice in the actual state and condition of this presidency.

By the Statute above mentioned, and by the subsequent explanatory act of 21 GEORGE III, Chapter LXX, which more accurately defined the jurisdiction of the Supreme Court; with a reservation of the laws and usages of the native inhabitants of Calcutta in cases of inheritance, and succeſ-

The laws of England extended to this country, as far as applicable, by the statute above mentioned, which established the Supreme Court at Calcutta; and

" fion "

by the subsequent acts, 21 Cap. LXX, 24 Cap. XXV, and 26 Cap. LVII, of His Majesty.

"tion to lands, rents, and goods, and all matters of contract and dealing between party and party, as well as the rights and authorities of fathers and masters of families;" the benefits of the laws of England, as far as applicable to this country, were extended by the legislature to all persons residing within the town of Calcutta; as well as to British subjects (natives of Great Britain; or their descendants) resident in any part of the provinces of Bengal, Behar, and Orissa. Certain descriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of His Majesty's British subjects, are also declared, by the acts above mentioned, amenable to the jurisdiction of the Supreme Court, in criminal cases; as well as in actions for wrongs or trespasses; and in civil suits by agreement of parties, in writing, to submit the same to the decision of that Court; the jurisdiction of which is further extended over all His Majesty's British subjects in India, or elsewhere within the limits of the Company's exclusive trade, by the Statutes 24 GEORGE III, Chapter XXV, and 26 GEORGE III, Chapter LVII.

More general introduction of British laws incompatible with local circumstances.

BUT the fixed habits, manners, and prejudices, and the long established customs of the people of India, formed under the spirit and administration of an arbitrary Government, totally opposite in principle and practice to that of England, would not admit of a more general application of British laws to the inhabitants of this country; who not only are ignorant of the language in which those laws are written, but could not possibly acquire a knowledge of our complex, though excellent, system of municipal law; composed, in part, of general and local English customs; partly of the civil and canon laws adopted in particular jurisdictions; and partly of the voluminous statutes, enacted by the King's Majesty, with the advice and consent of Parliament, during a period of more

than five hundred years *. The impossibility of introducing English laws, as the general standard of judicial decision in these provinces, without violating the fundamental principle of all civil laws, that they ought to be “ suitable to the genius of the people, and to all the circumstances in which they may be placed †,” has been ably stated by Mr. VERELST ‡, whose local knowledge and character (unfulfilled amidst universal corruption, as testified, to his honor, by Lord CLIVE) entitles his opinion to respect. His sentiments are also supported by those of Sir JOHN SHORE (now Lord TEIGNMOUTH), whose perfect acquaintance with the inhabitants of India, added to his high and well-merited reputation, his eminent public and private virtues, must ever give weight to his deliberate suggestion, that “ the grand object of our government in this country should be to conciliate the minds of the natives; by allowing them the free enjoyment of all their prejudices; and by securing to them their rights and property ||”. Moreover, when the provinces of Bengal, Lahar and Orissa, were virtually conquered by the British arms, as well as when the civil government of them was formally vested in the Company, by the Dewany grant, and the agreement with the Nuwáb NUJUM-OO-DOULAH in 1765, the inhabitants, Mahomedans as well as Hindoos, were in possession of their respective written laws; under which they had acquired property, by descent, purchase, gift, and other modes of acquisition; and which, from their religious tenets and prejudices, they had been educated and habituated to regard and venerate as sacred §. The Mahomedan government, which preceded.

Written laws in force when these provinces were acquired by the Company.

* See BLACKSTONE's third Introductory Section, on “ the laws of England” P. 84.

† VARRI, Book I. Cap. III. Also MONTESQUIEU's *Spirit of Laws*. Book I. Cap. III. *et passim*.

‡ In the fifth Chapter of his “ State of Bengal,” expressly upon this Subject.

|| See his “ Remarks on the mode of administering justice to the natives in Bengal; and on the collection of the revenues,” printed in the sixth volume of “ India Papers,” 1787.

§ Let it not be forgotten, in justice to Mr. HASTINGS, that the knowledge we possess of these laws, originated from his liberal, and politic, encouragement to the compilation, and translation, of a code of Hindoo Law; and to the translation of an approved commentary upon the Mahomedan Law. His English version of the former, made through a Persian medium, is

preceded the British authority in India, had indeed established its own criminal law, to the exclusion of that of the Hindoos. But from the long period, during which it had prevailed, it was, (in its principal and specific provisions at least) become generally known; and afforded, as far as it was regularly administered, a settled uniform rule for criminal prosecution, trial, and punishment.

Wife provisions of the British legislature in consequence.

THE British legislature therefore, when its attention was called to examine and regulate the management of the affairs of the East India Company, as set forth in the preambles to the acts of His present Majesty already referred to; instead of extending the local and complicated laws of England to the remote, populous, and long civilized territories, which had been gradually acquired by the East India Company, under former Acts of Parliament, and Charters from the King; wisely resolved to limit the administration of English law, over persons who, from their distant situation, and other circumstances, could not be admitted to the whole of the rights and privileges of British subjects*; and judged it sufficient to enact the salutary provisions contained in those Statutes; by the former of which (13 GEORGE III, Chapter LXIII, Sections 35 and 37,) it was declared lawful "for the Governor General and Council

3 George III. Cap. XIII, § 36, 7.

now, in a great degree, superseded by the "Ordinances of Menu" and "Digest of Hindū Law," derived immediately from the Sanscrit, by the talents, knowledge, and labours of Sir WILLIAM JONES, and Mr. H. T. COLEBROOKS: but Mr. HAMILTON's version of the "Hedayat," undertaken at the desire of Mr. HASTINGS, is still the only work, published in English, on the Mofulman Law; except the short tracts on inheritance, translated by Sir W. JONES; (who unhappily did not live to complete and illustrate the digest of Mahomedan and Indian Law, which had been commenced under his direction;) and SALE's version of the *Coran*, which, however accurate and valuable, is not calculated for legal reference.

* Were further authorities necessary, besides those which have been quoted, to shew the impolicy of extending the operation of English laws in India, beyond the limits to which they are now confined; and within which they are administered with the greatest public advantage, by the Supreme Court of Judicature at Calcutta; Mr. HASTINGS, the Marquess CORNWALLIS, and indeed every experienced person, who has held any public station in India, might be likewise appealed to. But the Legislature itself is evidently convinced of this truth; and there can be no doubt that it will be confirmed, as opportunity may offer, by the present intelligent and public spirited Judges of the Supreme Court; whose object has been rather to meliorate, than extend, its influence; to check expence and delay, and thereby to promote its means of justice, rather than to enlarge its jurisdiction.

“ of the United Company’s settlements at Fort William in
 “ Bengal, from time to time, to make and issue such rules, or-
 “ dinances, and regulations, for the good order and civil go-
 “ vernment of the said United Company’s settlement at Fort
 “ William aforesaid ; and other factories and places subordinate,
 “ or to be subordinate thereto, as shall be deemed just and
 “ reasonable ; such rules, ordinances, and regulations not being
 “ repugnant to the laws of the realm.” And by the latter Act
 (21, GEO. III, Cap. LXX, Section 23,) it was enacted “ that the
 “ Governor General and Council shall have power and au-
 “ thority from time to time to frame regulations for the provin-
 “ cial courts and councils ; and shall within six months, after
 “ the making of the said regulations, transmit or cause to be
 “ transmitted, copies of the said regulations to the Court of
 “ Directors, and to one of His Majesty’s principal Secretaries
 “ of State ; which regulations His Majesty in Council may
 “ disallow or amend ; and the said regulations, if not disallow-
 “ ed within two years, shall be of force and authority to direct
 “ the said provincial courts, according to the tenor of the said
 “ amendment, provided the same do not produce any new
 “ expense to the suitors in the said courts.” It was further
 provided in the act first mentioned, that the rules, ordinances
 and regulations made by the Governor General and Council,
 should “ not be valid, or of any force or effect, until the same
 “ be duly registered and published in the Supreme Court of
 “ Judicature, with the consent and approbation of the said
 “ Court ; which registry shall not be made until the expiration
 “ of twenty days, after the same shall be openly published, and
 “ a copy thereof affixed in some conspicuous part of the
 “ court house, or place where the said Supreme Court
 “ shall be held ; and from and immediately after such
 “ registry, as aforesaid, the same shall be good and va-
 lid in law.” But this and other restrictions, in the two
 clauses quoted, must be considered, under the subsequent
 acts of parliament, to have exclusive reference to the town of
 Calcutta, technically, though somewhat inaccurately denomi-
 nated the settlement of Fort William, and its subordinate fac-
ories.

Governor General
 and Council em-
 powered to make
 rules, ordinances,
 and regulations for
 the good order
 and civil go-
 vernment of the
 Company’s set-
 tlement at Fort
 William.

21, Geo. III.
 Cap. LXX,
 s. 23.
 And to frame
 regulations for
 the provincial
 courts and
 councils.

tories; to provide for the good order of which by a local power to frame any requisite rules and regulations, not repugnant to the laws of England, appears indeed to have been the principal if not the only object of the thirty-sixth, and thirty-seventh sections of the Statute 13, GEORGE III, Chapter LXIII. *

Authority of the Government General, and of the Governments at Fort St. George and Bombay, to make general rules and regulations for the good order and civil government of these settlements further recognized by 33 GEO. III, Chapter LII.

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Which has determined the system of government for the British territories in India, under the renewal of the Company's charter in 1793.

THE authority of the Governor General in Council at Fort William, and the subordinate power of the Governor and Council at Fort St. George and Bombay, "to make any general rule or regulation for the good order and civil government of those settlements respectively," are further recognized by the Statute 33, GEORGE III, Chapter LII, which defined the constitution and powers of the Board of Control, established by 24, GEORGE III, Chapter XXV, "to superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government, or revenues, of the British territorial possessions in the East Indies," and has determined the general system of government for the British territories in India; to be conducted, under the renewal of the Company's charter in 1793, by an efficient local authority; subject to high responsibility in England; to the direction and control of the Honorable Court of Directors, and the Board of Commissioners of His Majesty's Privy Council; and to the general superintendence, with such interposition as circumstances may render necessary, of the Parliament of the United Kingdom.

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Additional and express sanction given, to the exercise of a local power of legislation at this presidency, by

THE following additional and express sanction, to the exercise of a local power of legislation at this presidency, has also been since declared by the eighth section of the Act 37,

* The various opinions entertained of the extent of the legislative powers, meant to be vested in the Governor General and Council, by the act of 1773, with the uncertainty of even a Committee of the House of Commons, as to the exact intention of the 36th section of that act, may be seen in the first report of the select Committee appointed in 1781, and its Appendix. But the provisions, that the rules and ordinances to be made under that section, should not be repugnant to the laws of the Realm, and should be registered and published in the Supreme Court, with the approbation of that Court, appear applicable only to a jurisdiction where the laws of England are administered. And all necessity for a more extensive construction of any part of the Statute 13, GEORGE III, Ch. LXIII, is now superseded by the explicit declarations of the Legislature in 24, GEORGE III, Ch. LXX, and 33, GEORGE III, Ch. CXLII.

GEORGE III, Chapter CXLII, passed on the 20th day of July, 1797: " Whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Bahar, and Orissa, have been from time to time framed by the Governor General in Council in Bengal; and among other regulations it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by Government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code; and printed, with translations in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain; whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government; and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed; and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same; be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations in the country languages, and that the grounds of each regulation shall be prefixed to it; and all the provincial courts of judicature shall be, and they are hereby directed to be, bound by, and to regulate their decisions by, such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors

37 GEORGE
III, Chapter
CXLII, § 8.

" of the East India Company, ten copies of such regulations as may be passed in each year; and the same number to the Board of Commissioners for the affairs of India."

The tenor of the above section adopted by the legislature from Regulation XLI, 1793.

The substance of which is thus incorporated with the laws of the British empire. And is the corner stone of the system founded by Marquess Cornwallis in 1793.

Constitution thereby established for the native inhabitants of this dependent kingdom.

THE tenor, and for the most part, the terms, of the above section, are adopted from Regulation XLI, 1793, intitled " A regulation for forming into a regular code all regulations that may be enacted for the internal government of the British territories in Bengal;" the substance of which is thus incorporated with the laws of the British empire; and supported upon this firm basis, it may be deemed the corner stone of the system of regulation and policy for the internal government of these provinces, which was enacted, in the year 1793, by the MARQUESS CORNWALLIS. It may also be justly considered to have established a constitution for the native inhabitants of this dependent subordinate kingdom*, the most beneficial for them, and for the sovereign state, which the situation and circumstances of both will admit. It is impracticable to extend to India, held as a foreign dependency, the laws and constitution of Great Britain. Nor would such laws and constitution, (the inestimable privilege, and dearest right of those who have the happiness to be born and educated under them,) be suitable or acceptable, if they could be so extended, to a people whose " religion, laws, customs and manners (to use the words of an intelligent, though anonymous writer) † " have fixed such insuperable barriers to all assimilation, that " they can never be overcome; if so wild a project should ever

* An Ireland was before the late Union: See BLACKSTONE's fourth section, on the countries subject to the laws of England. His remarks on the state of Ireland, before its Parliament was united with that of Great Britain; on the laws enacted by the superior State, which, being generally calculated for its own internal government, do not extend to its distant dependent territories, bearing no part in the legislature, except when the sovereign legislative power sees it necessary to extend its care to any of its subordinate dominions; and on the nature and constitution of a dependent State, held under what is usually called the right of conquest, but in reason, and civil policy, under an express, or tacit, compact, to treat the conquered, on their acknowledgement of the victor's authority, as subjects; are so pertinent and applicable to the British territories in India, considered as a dependency on the Crown of Great Britain; that they well merit attention; and would have been inserted in this place, if they had not appeared too long for a note.

† The Author of " a short review of the British Government in India, and of the state of the Country before the Company acquired the grant of the Dewany," published in 1790.

" be attempted." It may however be truly said, that the Acts of Parliament now in force, and the existing codes of regulations, enacted by the governments of Fort William, Fort St. George, and Bombay, (which preserve to Hindoos and Mahomedans their respective laws, in suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions;) with the provision made for such further laws and regulations as circumstances and experience may, from time to time, shew to be required, have realized and established the system, which, in the well known work, intitled " Plans for the government and trade of Great Britain in the East Indies," is stated to combine the " prevailing opinions respecting the future government of India, and regulation of trade to the East Indies," viz. " That a system should be formed, which shall preserve, as much as possibly can be done, their institutions and laws to the natives of Hindoostan; and attemper them with the mild spirit of the British government. That this system should vest in the state its just rights of sovereignty over our territorial possessions in India, of superintending and controlling all matters of a financial, civil, and military nature. And that it should preserve the trade to the Company in all its branches; but give to the executive government a proper authority to regulate their proceedings; bound by a positive responsibility to Parliament.

By Regulation XLI, 1793, before referred to, (which has been since extended to the province of Benares* by Section IV, Regulation I, 1795, and re-enacted for the ceded provin-

Provisions of
Regulation
XLI, 1793.

* The sovereignty of this province was ceded to the Company by the fifth article of the treaty with the Vizier, Asuf-oo-Doqlah, dated 21st May 1795. But the system of internal administration, adopted in Bengal, Bahar, and Orissa, in 1793, was not extended to Benares till 1795, under an agreement with the Rajah, BAHADUR NARAYAN, bearing date the 27th October 1794.

ces by Regulation I, 1803*), it is enacted, with other subsidiary provisions, that "every rule or order that may be passed by the Governor General in Council, regarding the administration of justice, the imposition, or levying of taxes, or of duties on commerce, the collection of the public revenue assessed upon the lands, the rights and tenures of the proprietors and cultivators of the soil, the provision of the Company's investment, the manufacture of salt, or opium, and generally all regulations affecting, in any respect, the rights, persons, or property, of the natives, or any individuals who may be amenable to the provincial courts of judicature, shall be recorded in the judicial department; and there framed into a regulation, and printed and published;" in a prescribed form, with translations in the current languages of the country. That the regulations passed annually shall be numbered; and divided into sections, and clauses; so as to constitute a regular code. That every regulation shall have a title expressing the subject of it; and a preamble stating the reasons for the enactment of it. That if any regulation shall repeal or modify a former regulation, the reasons for such repeal or modification, shall be detailed in the preamble. And that "the civil and criminal courts of justice shall be

* By the "ceded provinces," are meant the districts of Moradabad, Bareilly, Irawa, Farrukhabad, Kanhpoor, Ilahabad, and Gorukhpoor, which were ceded to the East India Company by the Nuwab Vizier, on the 30th day of November 1801; the territory in Boondelkhund ceded by the Peshwa, on the 16th December 1803; and the districts of Panceput, Suharunpoor, Aylgurb, and Agra, ceded by DOULUT RA'O SINDHIA, on the 30th December 1803. The latter are also denominated the "Conquered provinces in the Doab, and on the right bank of the river Jumna." The regulations for the administration of justice in criminal cases, which had been enacted conformably to the rules prescribed in Regulation I, 1803, for the provinces ceded by the Nuwab Vizier, have, by Regulation IX, 1804, been extended to the territories ceded by the Peshwa and DOULUT RA'O SINDHIA; and it has been determined by Government to extend the remaining regulations, enacted for the provinces ceded by the Nuwab Vizier, to those ceded by the Peshwa and DOULUT RA'O SINDHIA, with such local modifications as may be found necessary. It has not therefore appeared requisite to distinguish the three descriptions of ceded provinces in this Analysis; except to notice any special provisions for them respectively. For a similar reason, no distinct mention is made of the province of Cuttack, which surrendered to the British Arms on the 14th October 1803; and to which the regulations for criminal justice and police, enacted for Bengal, Bahar, and Orissa, in the manner prescribed by Regulation XII, 1793, have been extended, by Regulation IV, 1804, except when it is necessary to specify any local provision for that province.

" guided in their proceedings and decisions by the regulations framed and transmitted to them as directed, and by no other." It is further provided, that in the English regulations, as well as in the translations of them into the languages of the country, the same designations and terms shall be applied to the same descriptions of persons and things; in order that rights, property, tenures, privileges, deeds, courts, processes, offices, officers, and generally all persons and things, may be uniformly described throughout the code. That the translator of the regulations, whenever he shall have occasion to insert the designation or name of any person, or thing, that he may have reason to believe will not be intelligible to the natives in general, and which may not have been used, and explained, in the translates of any former regulation, shall, in the first passage in which such word or term may occur, subjoin an explanation of it; that, upon its recurring, no doubt may be entertained as to its true meaning and import. That he shall also translate the regulations into plain and easy language; and, as far as may be consistent with a preservation of the true meaning and spirit of them, shall adopt the idiom of the native languages; instead of giving a close and verbal translation, which must necessarily be obscure, and often unintelligible. That " one part of a regulation is to be construed by another, so that the whole may stand." That " if any regulation shall be passed, differing from a former regulation, either wholly or partially, the new regulation is to be considered a virtual appeal of the old one, as far as it may differ from the latter, provided that the new regulation be couched in negative terms; or by its matter necessarily imply a negative." And, lastly, that " if a regulation, which rescinds another regulation, is itself afterwards rescinded, the original regulation is to be considered as revived, without any formal declaration to that purpose."

The principles, on which this fundamental regulation was grounded,

Principles of
the above reg.

lation, declared
in its preamble.

grounded, and the objects intended by it, must be obvious, after what has been stated, of the want of a general and published system of municipal law, at the time when this provision for it was made. In the preamble, it is declared " essential to the future prosperity of the British territories " in Bengal, that all regulations, which may be passed by government, affecting in any respect the rights, persons, or " property of their subjects, should be formed into a regular " code ; and printed with translations in the country languages : " that the grounds, on which each regulation may be enacted, " should be prefixed to it; and that the courts of justice should " be bound to regulate their decisions by the rules and ordinances which those regulations may contain." It is added that " a code of regulations framed upon the above principles, " will enable individuals to render themselves acquainted with " the laws, upon which the security of the many inestimable " privileges and immunities, granted to them by the British " government, depends; and the mode of obtaining speedy " redress against every infringement of them; the courts of " justice will be able to apply the regulations according to " their true intent and import; future administrations will " have the means of judging how far regulations have been " productive of the desired effect; and, when necessary, to " modify or alter them, as from experience may be found " advisable; new regulations will not be made; nor those " which may exist be repealed, without due deliberation; " and the causes of the future decline or prosperity of these " provinces will always be traceable in the code to their " source." It may further be observed, that by the enactment of this regulation, and by the institution of civil and criminal courts of justice, to be guided by the regulations framed and published in conformity with it, *and by no other*, an object, which in all countries has been held of the highest importance, for the protection of the person and property of the subject, that of administering justice by the means of judicial officers, independent

Separation of
judicial, from
legislative and
executive au-
thorities, effected
by this regu-
lation, and by
institution of
courts of justice,
on the principles
stated.

independent of the legislative and executive authorities of the state, has been attained and secured for this country, in as great a degree as the circumstances of it admit. Constituted as the courts of justice now are; and bound as the judges are by oath, "to administer justice conformably to the regulations, that have been, or may be, passed by the Governor General in Council, to the best of their ability, knowledge, and judgment, without fear, favor, promise, or hope of reward;" restricted also, as they are by oath, from being concerned, directly or indirectly, in any commercial transactions; as well as from deriving any "emoluments or advantages from their stations, excepting such as the orders of government do or may, authorize them to receive;" and liberal as their fixed and authorized allowances now are, such as to remove every shadow of pretence for deviating, in the slightest degree, from the sacred obligations imposed upon them by their oaths, by the laws and regulations, by the public trusts committed to them, by their honor and character, and by every principle of religion and morality; it may be pronounced with confidence, that effectual and sufficient provision (under the vigilant care of government to select proper persons for administering the laws, and to make public examples of any who may dare to violate them;) has been made, by the system now established, to extend to the numerous and industrious Inhabitants of this remote, but valuable portion of the British Empire, the important benefit, enjoyed by the European subjects of the same state; a pure, and impartial administration of justice: or as emphatically expressed in the recent address of Marquess WELLESLEY to the students of the College of Fort William; "that primary object of all good government, the greatest blessing attainable by any people, an impartial administration of just law."

That the Governor General in Council may be apprized of such general, or local, regulations, as the magistrates, or any

Provisions for
the proposition
of new regula-
tions to Go-
vernment.

of

of the civil or criminal courts of judicature, may deem it advisable to propose, respecting matters coming within their cognizance; The judges of the whole of those courts, as well as the magistrates of the several zillahs (districts) and cities, are empowered by Regulation XX, 1793, (extended to Benares by Regulation XXXIX, 1795, and re-enacted for the ceded provinces by Regulation IX, 1803,) to propose regulations regarding any matters coming within their cognizance; under prescribed rules for drawing out the same in the form directed by the regulation before noticed; and for submitting them, when so prepared, through the proper official channel, for the sentiments of the superior courts, in the first instance; and ultimately for the consideration of the Governor General in Council; to whom is reserved a discretion to reject or adopt any regulation that may be submitted to him; or to pass such other regulation as may appear to him proper. The same power of proposing any new regulation, regarding matters within the cognizance of the officers of revenue, is vested in the Board of Revenue and the collectors of districts, by Section XXXI, Regulation VII, 1799, (extended to Benares by Section XXVIII, Regulation V, 1800; and to the ceded provinces by the last Section of Regulation XXVI, 1803;) and though not expressly provided for, the same means of bringing forward any new regulations, which local knowledge and experience may suggest, are understood to be open to every other department of the public service. By Regulation X, 1796, (re-enacted for the ceded provinces by Regulation XXII, 1803,) it is further provided that in all "cases of difference of opinion on the meaning and construction of the regulations" between the zillah and city judges and magistrates, and the judges of the provincial courts of appeal and circuit, a reference, if desired by the subordinate judge and magistrate, after stating his objections to the provincial court, and receiving their precept in reply thereto, shall (without however suspending the execution of such

and for securing
an uniform con-
struction of the
existing regu-
lations.

such precept) be made to the superior civil court, of sudder dewanny adawlut; or to the superior criminal court, of nizamut adawlut. Copies of the precepts issued, and returns made, with such other papers as may be necessary for information of the circumstances of the case, are directed to be transmitted, whenever such references may occur, to the sudder dewanny adawlut or nizamut adawlut: and the determination of those courts, “ who are empowered to prescribe the forms
 “ and conduct to be observed by the provincial, zillah, and
 “ city courts of dewanny adawlut, the courts of circuit, and
 “ the zillah and city magistrates, in all cases provided for by
 “ the regulations, agreeably to their construction thereof, is
 “ to be held final and conclusive. Should any doubt occur
 “ to the sudder dewanny adawlut, or the nizamut adawlut,
 “ with respect to the meaning of any part of the regulations,
 “ or should it appear to them, on occasion of any reference
 “ from the provincial, zillah, or city courts, the courts of cir-
 “ cuit, or the zillah or city magistrates, that the regulations
 “ do not sufficiently provide for the case submitted to their
 “ decision, they are, in the former case, to report the circum-
 “ stances of it to the Governor General in Council, that a new
 “ regulation may be framed in explanation of such doubt;
 “ and in the latter case, are to propose a new regulation in
 “ the manner prescribed by Regulation XX, 1793.”

It would be superfluous to offer any further comment, on the wisdom, policy, and utility, of the general legislative provisions, which have been thus enacted; and which constitute the ground-work of the existing system of internal government in these provinces; founded, as already observed, upon the still broader basis of British law; and it may be said, cemented with the spirit of the British constitution. It appeared proper, in this preliminary section, to state concisely, the gradual establishment of sovereign authority in the Company's territorial possessions under this presidency; the relative situa-
 tion.

Concluding ob-
 servation on the
 legislative pro-
 visions, recited
 in this section.

tion of these possessions, as forming a constituent part, and dependent kingdom, of the British empire, governed, for political and commercial purposes, through the managers, and local agents, of a chartered corporation, under the control of the executive and legislative powers of the state; and the declared sanction of the legislature, which has given the force and authority of law, within the jurisdiction of the Governor General in Council at Fort William, to the regulations that form the subject of this analysis. It will be sufficient to add the following apposite remark of an eminent author on the law of nature and nations.* “There is but one way of forming a civil code, either consistent with common sense, or that has ever been practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate.” The regulations which have, from time to time, been enacted by the British Government in India, illustrate the truth of this remark; which also satisfactorily explains, why no code of laws could, at once, be rendered so complete, and perfect, as not to require addition or alteration.

* Sir JAMES MACKINTOSH, in his discourse on the study of the law of nature and nations, introductory to a course of lectures on that science. From the extensive knowledge displayed in this discourse, as well as from its classical language, and the known abilities of the writer, it is much to be regretted that his course of lectures, which, it cannot be doubted, exemplified ample grounds of the conviction expressed by him, “that public lectures, which have been used in most ages and countries, to teach the elements of almost every part of learning, were the most convenient mode in which these elements could be taught; that they were the best adapted for the important purposes of awakening the attention of the student; of abridging his labour; of guiding his enquires; of relieving the tediousness of private study; and of impressing on his recollection the principles of science;” have not been published for general information and instruction.



SECTION II.

COURTS OF CIVIL JUSTICE.

AN eminent writer upon political œconomy * has stated the first duty of the sovereign, in every civilized state, to be “that of protecting the society from the violence and invasion of other independent societies;” and his second duty to be “that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it; or the duty of establishing an exact administration of justice.” The former of these obligations is foreign to the subject and design of this analysis. Of the latter, such part as relates to the duty of enacting and publishing an equitable system of law, has been set forth, imperfectly, but, it is hoped, sufficiently for the object intended, in the preceding section. The purpose of this will be, to consider the second branch of the public obligation stated, that of providing for the due execution of the laws; particularly of those which relate to the redress of private wrongs, or civil justice; the consideration of such as regard the punishment and prevention of public wrongs and offences, or criminal justice and police, being reserved for the succeeding section. . .

Obligation upon the ruling power, in every state, to administer justice.

Civil justice the subject of the present section.

In every country, and under every form of government, an efficient administration of justice, to protect from violence, and secure from injury, the natural and civil rights of the subject, is manifestly the duty, as it is also the evident interest, of the governing power: “This obligation flows from the end,

The due administration of a just system of law, as much the interest, as it is the duty, of the governing power.

* A. SMITH, in the fifth Book of his admirable “Inquiry into the nature and causes of the wealth of nations.”

and very contract of civil society*." Protection and allegiance are reciprocal †. And whether the British possessions in India were acquired by grant, cession, or conquest, the natives are equally intitled, in return for their obedience and contributions, to the common right of all subjects, security of person and property; as far as the same can be maintained by a system of good laws well administered. (Such an administration must, at the same time, promote the prosperity of the country; the advantages to be derived from it by the East India Company; and the permanent interests and policy of the British Nation. In proportion as the inhabitants are secured against wrong to their persons and property, their industry will be excited in the extension of agriculture, manufactures, and commerce. As these are extended, the resources of the country must be increased. And if the people experience the benefits of good government, in the free exercise of their religion; in the protection of their persons from injury; and in the safe enjoyment of their property; they must be better satisfied with the government under which they enjoy these substantial benefits; than they could be under a system of persecution, oppression, and injustice; or under any system less calculated to produce their ease and happiness.

Influence of
above principles
on the British
administration
in India.

THESE obvious truths, and just principles, appear to have influenced, in a greater or less degree, the British administration in India, from the time of its first operative interference in the government of the country; and there can be no ground of doubt, that justice has been more impartially administered in the civil courts established since the year 1772, when it was resolved (as already noticed) to execute the functions incident to the dewany grant of 1765, through

* Vattel, Book I. Cap. XIII.

† BLACKSTONE, Book I. Cap. X. "Allegiance is the tie, or *Ligamen*, which binds the subject to the King, in return for that protection, which the King affords the subject."

the agency of the Company's servants; than in the courts before established by the Mahomedan government; of which a Committee of the House of Commons, who made the state of the former judicatures in Bengal a special object of their enquiry, reported in the year 1773, that " so far as they were " able to judge, from all the information laid before them, the " subjects of the Moghul empire in that province derived " little protection or security from any of these courts; and " that, in general, though forms of judicature were established, " and preserved, the despotic principles of the government " rendered them the instruments of power, rather than of " justice; not only unavailing to protect the people; but " often the means of the most grievous oppressions under the " cloak of the judicial character." The committee further stated it to be " the general sense of all the accounts they had " received respecting these courts; that the administration of " justice, during the vigour of the ancient constitution, was " liable to great abuse and oppression; that the judges generally lay under the influence of interest; and often under " that of corruption; and that the interposition of government, from motives of favor or displeasure, was another frequent cause of the perversion of justice *." This authoritative statement is corroborated by every well informed writer on the Mahomedan government of Bengal, after it ceased to be directed by the regular control, and vice royal appointment, of the Emperor; from SCRAFTON, who, in his first letter†, states, " the government of the Moors borders so near on " anarchy, you would wonder how it keeps together;" to Governor VERELST, who, in his instructions to the supervisors (appointed in 1770) observes: " It is difficult to determine whether the original customs, or the degenerate manners, of the Mussulmen, have most contributed to confound " the principles of right and wrong in these provinces. . . . Cer-

Report of a Committee of the House of Commons on the former judicatures in Bengal.

Corroborated by writers on the Mahomedan government of Bengal, after it became independent of imperial control.

* Vide sixth report of the committee of secretaries, 1773.

† On the government of Hindoostan, published in 1763.

"tain it is that almost every decision of theirs is a corrupt bargain with the highest bidders.*"

Plan of the committee of circuit, for the administration of justice, adopted in 1772.

IMMEDIATELY after the receipt of orders from the Honorable Court of Directors, to enter upon the duties of the dewanny office, a committee was appointed, consisting of the Governor Mr. HASTINGS, and four Members of the Council; who, on the 15th August 1772, proposed a plan for the administration of justice, which, on the 21st of the same month, was adopted by the government. Under this plan, which contains some original provisions yet preserved in our judicial code, mofussil dewanny adawluts, or provincial courts of civil justice, under the superintendence of the collectors of the revenue, were established in each district. "All disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, all claims of debt, disputed accounts, contracts, and demands of rent," were declared cognizable by these courts; excepting the right of succession to zemindaries and talookdaries; the decision of which was reserved to the President and Council. A court of sudder dewanny adawlut, or superior civil court, was at the same time instituted at the presidency, under the superintendence of three or more Members of the Council, to hear appeals from the provincial courts, in causes exceeding five hundred rupees. It was declared that, "as nothing is more conducive to the prosperity of any country, than a free and easy access to justice and redress, the collectors shall at all times be ready to receive the petitions of the injured." The custom of levying *chout*, *duffuttra*, *punchuttra*, or any other fee or commission, on the amount of money recovered, or *etlah* on the decision of

* That the same favorable comparison may be made, between the system of internal government now established in the provinces recently ceded by the Nuwab Vizier, and that which subsisted before the cession in 1801; is abundantly shewn by an official report, dated the 10th February 1805, from Mr. HENRY STRACHAN, one of the judges of the court of appeal and circuit for those provinces; who remarks:—"It is scarcely possible for an unprejudiced mind to doubt the superiority of our Government to the native Governments. To do so, is to compare anarchy, oppression, and wretchedness, with justice, moderation, peace and security."

causes, as well as all heavy arbitrary fines, " was for ever abolished." And, besides provisions for local investigations regarding disputed lands, boundaries, &c. and for the settlement of accounts, partnerships, and other matters, by arbitration, when the parties might agree thereto; it was provided " that in all suits regarding inheritance, marriage, cast, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to. On all such occasions the Moulavies or Brahmins shall respectfully attend to expound the law, and they shall sign the report, and assist in passing the decree."

In 1774, an alteration took place in the constitution of the mofussil dewanny adawlut, by the recal of the collectors, and appointment of provincial councils for the divisions of Calcutta, Burdwan, Dacca, Moorsshedabad, Dinagepore, and Patna. The administration of civil justice was vested in the Council at large; but exercised by one of the members in rotation. This plan continued in force till the 28th March 1780, when the Governor General and Council resolved, that, for the more effectual and regular administration of justice, distinct courts of dewanny adawlut should be established in the six divisions abovementioned; to be independent of the provincial councils; and to take cognizance of all claims of inheritance to zemindaries, talookdaries, or other real property; or mercantile disputes; all matters of personal property (with the exceptions subsequently noticed) and all disputes about the limits of landed property within the town of Calcutta; and Panchawungong, or the fifty-five villages surrounding it. But the provincial councils were to try and decide, as heretofore, all causes having relation to the public revenue, as well as all demands of landholders and farmers on their under-renters, or others, for arrears of rent; and all complaints from ryots and tenants of every description,

Alteration in the constitution of the civil courts, on the appointment of provincial councils, in 1774.

Further alteration, by the establishment of distinct courts, in 1780.

tion, for irregular or undue exactions of rent or revenue. The provincial councils were further to try and decide all disputes relative to boundaries; except within the town of Calcutta and Punchawungong (which were excepted as, from their number and intricacy, being likely to occupy too much of their time) and also all claims for money lent to zemindars, talookdars, and chowdries, for the payment of the revenue. The further provisions for the administration of justice, made at this period, are detailed in a plan, recorded on the proceedings of the Governor General and Council, under date the 28th March 1780; and printed in the Appendix to the First Report from the Select Committee of the House of Commons, appointed in 1781.

New constitution of sudder dewanny adawlut, in 1780.

Regulations passed on the 3d November 1780.

Incorporated, in a revised code, passed on the 5th July 1781.

Objects of this code.

THE avocations of the Governor General and Council having prevented their sitting in the court of sudder dewanny adawlut, a separate judge (Sir E. IMPEY) was, on the 18th October 1780, appointed to the charge and superintendency of that court. And, on the 3d November following, thirteen articles of regulations, prepared by the judge, and approved by the government, were passed for the guidance of the civil courts, superior and inferior; which were afterwards incorporated, with additions and amendments, in a revised code, comprizing ninety five articles, of "Regulations for the administration of justice in the courts of mofussil dewanny adawlut, and in the sudder dewanny adawlut, passed in Council the 5th of July 1781;" the declared objects of which were "the explaining such rules, orders and regulations, as may be ambiguous; and revoking such as may be repugnant or obsolete, to the end that one consistent code be framed therefrom; and one general table of fees established in and throughout the said courts of mofussil dewanny adawlut; by which a general conformity may be maintained in the proceedings, practice, and decisions of the several courts; and that the inhabitants

.. of these countries, may not only know to what courts, and
 .. on what occasions, they may apply for justice; but, see-
 .. ing the rules, ordinances and regulations, to which the
 .. judges are by oath bound invariably to adhere, they may
 .. have confidence in the said courts; and may be apprized
 .. on what occasions it may be advisable to appeal from the
 .. courts of mofuffil dewanny adawlut to the court of
 .. sudder dewanny adawlut; and knowing the utmost of the
 .. costs which may be incurred in their suits, may not, from
 .. apprehension of being involved in exorbitant and unfore-
 .. seen expences, or of being subjected to frauds, or extortion of
 .. the officers of the court, be deterred from prosecuting their
 .. just claims."

UNDER these regulations (which were printed with transla-
 tions, and which constitute a principal foundation of the rules
 now in force, relative to the administration of civil justice,
 though including a material deviation from the present system,
 with respect to the cognizance of rent and revenue causes,
 as will be more fully stated) all suits concerning the inheritance
 or succession to zemindaries, talookdaries or other landed
 property, or concerning any right, title, or claim of posses-
 sion thereto, or the bounds and limits thereof, and concern-
 ing debts, accounts, contracts, or property of any nature
 whatsoever, real or personal, (exclusive of demands for ar-
 rears of rent, or complaints for exactions of rent, and all causes
 relative to the public revenue, the cognizance of which was
 left to the collectors, who had been substituted for the
 provincial councils) were made cognizable, as heretofore, by
 distinct courts of mofuffil dewanny adawlut; which had
 been augmented to the number of eighteen, on the 6th April
 preceding, in consequence of experienced inconvenience
 from the too extensive jurisdiction of the six before institut-
 ed; and the judges of which were unconnected with the
 revenue department; except in the districts of Chittra, Bha-
 gulpore,

Jurisdiction of
 the civil courts,
 established un-
 der the regu-
 lation.

gulpore, Islamabad and Rungpore; where, for local reasons, the offices of judge and collector were vested in the same person; but with a provision that the judicial authority should be considered altogether separate from that of the collector; and that in the former capacity the judge should be wholly independent of the board of revenue; subject only to the authority of the Governor General in Council; and of the judge of the sudder dewanny adawlut. The superintendence of this court was reassumed by the Governor General and Council, on the 15th November 1782, in pursuance of instructions from the Honorable Court of Directors; and by the Statute 21, GEORGE III, Cap. LXX, it was declared, that "Whereas the Governor General and Council, or some committee thereof, or appointed thereby, do determine on appeals and references from the country or provincial courts in civil causes; be it further enacted, that the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record; and the judgments therein given shall be final and conclusive; except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards."

Superintendence of the sudder dewanny adawlut reassumed by the Governor General and Council, in 1782.

And the powers of this court, declared to be a legal court of record, confirmed by the Statute 21, GEORGE III, Cap. LXX, with an appeal to the King in Council, in suits for good, and upwards.

Change of system in 1787; by uniting the offices of judge and collector in the same person; except in the three cities.

In the year 1787, in consequence of further instructions from the Court of Directors, it was resolved that, with an exception to the three courts established in the cities of Moorshedabad, Patna, and Dacca; (which were to continue independent of any collectorship for the decision of causes of a civil nature originating within the limits of these cities,) the office of judge of the several moofussil courts, should be held by the person who had, or should hereafter have, the charge of the revenue. A revised code of judicial regulations, adapted to this change of system, and dated the 27th June 1787, was at the same time printed and published, with translations, in ninety

Revised code of regulations adapted to this change.

one articles; the fourteenth of which declared the matters cognizable in the mofuffil adawlut to be, all disputes concerning property, real or personal; all causes of inheritance, marriage or cast; all claims to zemindaries, talookdaries, and other lands; all matters relating to debts, accounts, contracts, partnerships, and duties; and in general all " subjects of litigation, " being of a civil nature, and not concerning the revenues." But, by the 19th section, these courts were not to entertain " any suit or cause for any matter or thing directly " or indirectly relating to the public revenue; or concerning " any demand of government on zemindars, talookdars, " chowdries, or other landholders, farmers, muttahids, wada- " dars, securities, aumils, tussildars, etmamdars, or others, em- " ployed in the collections, or, in any wise responsible for the " revenues; or any demands of zemindars, talookdars, chow- " dries, or other landholders, farmers, muttahids, wadadars, " securities, aumils, tussildars, etmamdars, or other persons " employed in the collections, or their under farmers, malza- " mins, inferior landholders, and collectors, or others, from " whom rents or revenues have been immediately due to them. " Nor any demands for rents or revenues on persons employ- " ed in the collection of them, officially or hereditarily, in the " different gradations downwards, from government to the " ryots, or immediate occupants of the soil; nor again, in the " same manner, of any complaints of ryots and persons, of any " of the abovementioned denominations, against the persons " to whom they pay revenues in the different gradations up- " wards, for irregular or undue exactions."

"THE whole of the causes, thus excepted from the jurisdiction of the courts of dewanny adawlut, were made cognizable by the collectors, under a separate code of revenue regulations (passed on the 8th June 1787,) by the first article of which it was provided, " that the several branches of the public duty, " now vested in the collector, shall not be blended in the exe-
" cution ;

Causes relating to the land revenue or public revenue, made cognizable by the collectors; under a separate code of regulations; and appealable to the board of revenue and Governor General and Council.

" cution; but each part shall be discharged by him in the
 " capacity of collector, judge, or magistrate, according to the
 " department to which it belongs, and be recorded in the pro-
 " ceedings of that department only, distinct from others."
 It was further provided, that the board of revenue should be
 authorized to receive appeals in matters of revenue, from the
 decisions of the collectors; if preferred within one month; and
 an ultimate appeal was allowed from their determination, with-
 in the same period, to the Governor General and Council.

Reasons assign-
 ed for re-invest-
 ing the col-
 lectors with the
 superintendence
 of the civil
 courts,

And objections
 stated against
 the former sys-
 tem.

THE reasons assigned for reinvesting the collectors with the
 superintendence of the courts of mofussil d wanny adawlah
 (a system which had been discontinued in 1780, " for the
 " more regular administration of justice in the country civil
 " courts of these provinces;") were " the greater simplicity,
 " energy, justice, and economy, expected to be the result of
 " the measure." The following objections, which candour re-
 quires to be noticed, had also been stated, against the system
 established in 1780 and 1781, by one of the most experienced,
 ablest, and best informed of the Company's servants*. " People
 " accustomed to a despotic authority should look to one master.
 " It is impossible to draw a line between the revenue and judi-
 " cial departments in such a manner as to prevent their clashing;
 " and in this case, either the revenues must suffer, or the
 " administration of justice must be suspended. The present
 " regulations define the objects of the two jurisdictions with
 " clearness and precision; yet they continually clash in prac-
 " tice: complaints are so blended, that it is often impossible
 " to determine to which tribunal they belong; and that there
 " has not been more confusion than has actually happened,

* Sir J. SHORE. In his " remarks on the mode of administering justice to the natives in
 " Bengal, and in the collection of the revenues," which have been already mentioned as deli-
 vered to Sir J. MACPHERSON in January 1782, and recorded by the latter on the Bengal
 revenue consultations of 29th May 1785. It should be added, as appears from Sir J. Mac-
 pherson's minute, recorded at the same time, that these remarks were written for his personal
 information; and were " not meant for the public eye."

" is owing to the discretion of those who have been entrusted
 " with the administration of justice. It may be possible, in
 " the course of time, to induce the natives to pay their rents
 " with regularity, and without compulsion, but this is not
 " the case at present. If any force is offered, a complaint is
 " made in a court of justice, and whether true or false, a
 " temporary protection is given to the complainant, who is
 " released from the demands upon him; to realize them af-
 " terwards is no easy matter. In all demands for revenues,
 " or in summonses to cause the attendance of parties at the
 " adawluts, peons are employed, and very often the peons
 " of the two tribunals meet at the house of the same man,
 " where the property of his person is contested, and he is
 " obliged to pay both parties."

But, admitting that a system, vesting in the hands of one
 person the powers of judge and magistrate, and the autho-
 rity necessarily entrusted to the officers employed in the
 collection of the public revenue, may be more simple, ener-
 getic, and economical, than a system which divides these
 powers between distinct persons and authorities; it is mani-
 festly too extensive a trust; and if a higher degree of justice
 be rendered, in any instance, by an administration of the
 former system, it must proceed from the personal character
 and qualifications of the individuals employed to administer
 it. These, for a time, might check the natural tendency of
 such an accumulation of power to the abuse of it; but could
 not be relied upon, as a fixed principle, to support any per-
 manent system of justice. Admitting further, what is by no
 means certain, under proper provisions, that the collector,
 armed with the powers of judge and magistrate, might expe-
 rience more facility in enforcing demands of revenue; than
 if there were an independent court of justice upon the spot,
 to which the injured could resort when his demands, or those
 of the native officers acting under him, exceed what is justly;
 " due;

Remarks on the
 reasons and ob-
 jections above
 stated.

due; by what means could redress be obtained against injustice in such demands, where the collector himself presided in the only local tribunal? Complaints indeed might have been preferred, whilst this system prevailed, to the board of revenue, or to the Governor General and Council, at the presidency; but the distance of most of the districts from Calcutta, with the delay and loss of time that must always ensue, operated to prevent such recourse, except in cases of serious oppression; and a dread of the various powers united in the collector's person must have been a stronger bar to complaint against him; especially when every estate within his jurisdiction was liable to an annual increase of its assessment, either at his discretion, or upon his information. Add to this the difficulty of ascertaining the truth of any complaint against a collector, when he was the only judicial officer upon the spot; and it must be obvious that if few cases did occur of actual oppression, or injustice, in the exercise of the high powers formerly vested in the collectors of the public revenue, it must be ascribed to their personal merits; which, as before observed, might for a time prevent the ill consequences of a defective system; but could not be urged against the expediency of a more certain and adequate remedy. It might be added, that some cases have occurred to shew the necessity of supplying this defect in the former system of revenue and justice. But it is not necessary that an abuse of authority should actually take place to evince the wisdom of guarding against it. Nor was this the only objection to the union of the functions of judge and magistrate with those of the collector. In the latter capacity his measures and conduct were continually open to inspection. The monthly reports made by him of the state of his collections drew the constant attention of the board of revenue, and of government, to his success, or failure, in realizing the public dues; and commendation, or censure, was the frequent result; whilst, at the same time, his diligence or neglect in the decision of causes,

causes, wherein the government had no immediate interest, was seldom brought into public notice ; and when observed, the multiplicity of duties he had to perform might be a real plea of justification for any delay in the administration of justice. Under these circumstances, it was natural and unavoidable, that the collection of the revenue, on which the collector's credit and promotion in the service might depend, should be considered his primary duty ; and that his duties as judge and magistrate should be regarded as subordinate. The latter might be expected to give way, or at least to remain suspended, whenever they interfered with the former ; and, without supposing that any collector was influenced by his commission on the amount of his revenue collections, it may fairly be inferred, that no collector of an extensive district could have given that constant attention to the administration of civil and criminal justice, and police, which the due performance of these important duties indispenably requires.

A THIRD objection to the system of civil justice, subsisting under the regulations of 1787, applies equally to every system established before that of 1793 ; and may be considered to have been a principal cause of the clashing of authorities noticed in the foregoing quotation. The exception of all suits relative to the public revenues, as well as all demands of the landholders, and farmers of land, upon their under-renters and tenants, and all complaints of the latter against the former, " for irregular or undue exactions, or for any oppressions whatsoever," from the jurisdiction of the courts of *dewany adawlut* ; whilst these courts were to have cognizance of all complaints and claims, relative to the property of lands, " or any right, title, claim, demand, interest, or lien, to or in the same, or to the possession thereof," could not fail of rendering it " often impossible to determine to which tribunal a blended complaint belonged ; and the inconveniences stated :

Further observations on the system of civil justice established in 1787, and applicable to every system antecedent to that of 1793

stated to have been experienced were the natural result. The making all complaints of exaction or oppression, in the collection of the revenue and land rents, exclusively cognizable by the collector of the revenue, must also, in frequent instances, have stopped the course of justice; and, in others, have subjected the collector's judgment, however just, to suspicion of its impartiality, from the known interest he had in realizing the revenue under his charge; and consequently in supporting the landholders and farmers, from whom it was to be received, in the enforcement of their demands upon their under-renters and tenants. The same bias might be suspected in the collector's decision upon cases of exaction, or undue severity, by any native officer employed under him in the public collections; and where there was no other local court, except that of the collector, to grant redress, it may be presumed that the application for it was often repressed by fear or distrust. This reasoning does not apply to the collectors, and their subordinate officers, being employed to adjust disputed accounts of rent between the landholders, farmers, and tenants, subject to appeal from their adjustment to an independent court of justice upon the spot. On the contrary, the greatest convenience to the parties concerned has been found to result from the revenue officers, whose knowledge and situation peculiarly qualify them for such adjustments, being thus usefully employed, as referees, under the established courts of justice; but it is forcibly applicable to the collector's authority as formerly subsisting, exclusive in all cases of rent or revenue demand, arrear, or exaction; and without any efficient superior court of revision or control.

The revenue officers may be usefully employed as referees, under the established courts of justice; to adjust disputed accounts of rent between the landholders and farmers, and their tenants.

Observations of the Marquis Cornwallis on the arrangements proposed by him.

To the remark that "people long accustomed to a despotic authority should only look to one master," without questioning its general truth and propriety, may be fairly opposed the following observations of the MARQUESS CORN-

WALLIS:—"The proposed arrangements only aim at insuring a general obedience to the regulations, which we may institute; and at the same time impose some check upon ourselves against passing such as may ultimately prove detrimental to our own interests, as well as the prosperity of the Country. The natives have been accustomed to despotic rule from time immemorial, and are well acquainted with the miseries of their own tyrannic administrations. When they have experienced the blessings of good government, there can be no doubt to which of the two they will give the preference. We may therefore be assured that the happiness of the people, and the prosperity of the country, is the firmest basis on which we can build our political security. When the landholders find themselves in the possession of profitable estates; the merchants and manufacturers in the enjoyment of a lucrative commerce; and all descriptions of people protected in the free exercise of their religion; both the numerous race of the long oppressed Hindoos, and their oppressors the Mahomedans, will equally deprecate the change of a government under which they have acquired, and under which alone they can hope to enjoy, these inestimable advantages."

IMPRESSED by these considerations; by a sense of the radical defects, above stated, in the constitution of the provincial courts of judicature, which subsisted at the commencement of 1793; and by the many and powerful reasons, moral and political, which called for such an administration of justice, as by securing the private rights of every description of persons, should promote the public advantage, and general prosperity of the country; the MARQUESS CORNWALLIS determined to vest the collection of revenue, and administration of justice, in separate officers; to abolish the *mâl adawls*, or revenue courts; and to withdraw from the collectors of revenue all judicial powers; transferring the cognizance of all causes hitherto

Reasons for vesting the collection of revenue, and administration of justice, in separate officers; for abolishing the revenue courts; and for withdrawing all judicial powers from the collectors.

hitherto tried by the revenue officers to the courts of dewanny adawlut. The preamble to Regulation II, 1793, contains the reasons publicly assigned for this measure, in the following terms:—" All questions between government and the land-
 " holders, respecting the assessment and collection of the pub-
 " lic revenue, and disputed claims between the latter and
 " their ryots, or other persons concerned in the collection
 " of their rents, have hitherto been cognizable in the courts
 " of mál'adawlut or revenue courts. The collectors of the
 " revenue preside in these courts as judges; and an appeal
 " lies from their decisions to the board of revenue, and from
 " the decrees of that board to the Governor General in Coun-
 " cil in the department of revenue. (The proprietors can
 " never consider the privileges which have been conferred
 " upon them as secure, whilst the revenue officers are vested
 " with these judicial powers. Exclusive of the objections
 " arising to these courts from their irregular, summary, and
 " often exparte proceedings, and from the collectors being
 " obliged to suspend the exercise of their judicial functions,
 " whenever they interfere with their financial duties; it is
 " obvious that if the regulations for assessing and collecting
 " the public revenue are infringed, the revenue officers them-
 " selves must be the aggressors; and that individuals who
 " have been wronged by them in one capacity, can never
 " hope to obtain redress from them in another.) Their finan-
 " cial occupations equally disqualify them for administering
 " the laws between the proprietors of land and their tenants.
 " Other security therefore must be given to landed proper-
 " ty, and to the rights attached to it, before the desired im-
 " provements in agriculture can be expected to be effected.
 " Government must divest itself of the power of infringing,
 " in its executive capacity, the rights and privileges, which,
 " as exercising the legislative authority, it has conferred on
 " the landholders. The revenue officers must be deprived
 " of their judicial power. All financial claims of the pub-
 " lic,

" lic, when disputed under the regulations, must be sub-
 " jected to the cognizance of courts of judicature, superin-
 " tended by judges, who, from their official situations, and
 " the nature of their trusts, shall not only be wholly unin-
 " terested in the result of their decisions, but bound to de-
 " cide impartially between the public and the proprietors of
 " land, and also between the latter and their tenants. The
 " collectors of the revenue must not only be divested of
 " the power of deciding upon their own acts, but rendered
 " amenable for them to the courts of judicature; and collect
 " the public dues, subject to a personal prosecution for every
 " exaction, exceeding the amount which they are authorized
 " to demand on behalf of the public; and for every deviation
 " from the regulations prescribed for the collection of it. No
 " power will then exist in the country, by which the rights
 " vested in the landholders by the regulations can be infrin-
 " ged; or the value of landed property affected. Land must
 " in consequence become the most desirable of all property;
 " and the industry of the people will be directed to those im-
 " provements in agriculture, which are as essential to their
 " own welfare, as to the prosperity of the state." It was ac-
 " cordingly enacted by Section II of the regulation above cited,
 " that from " the 1st May 1793, the courts of mál adawlut, or
 " revenue courts, shall be abolished; and the trial of the suits
 " which were cognizable in those courts, as well as all judicial
 " powers whatsoever heretofore vested in the collectors of the
 " revenue, or in the board of revenue collectively, as a court
 " of appeal, or in any member of that board individually, shall
 " be transferred to the courts of dewanny adawlut."

Section II, Reg-
 ulation II,
 1793, abolish-
 ing courts of
 mál adawlut and
 judicial powers
 of the revenue
 officers.

THE powers with which the revenue officers were at the
 same time invested, for the punctual collection of the public
 dues, will be noticed in a subsequent part of this analysis. It
 is sufficient to quote in this place the following remark from
 the Governor General's public minute on the occasion.

Governor Ge-
 neral's remark
 on the powers
 requisite to
 force the col-
 lection of the
 public revenues;
 and the neces-
 sity of courts of
 justice to pre-
 vent an abuse of
 such powers.

" There

“ There is no class of men which government should watch
 “ with greater jealousy, and over whom the regulations should
 “ have a stricter control, than the officers who are entrusted
 “ with the collection of the public revenue. It is necessary to
 “ arm them with powers to enforce their demands in the first
 “ instance; otherwise individuals, under the pretext of dispu-
 “ ting the justness of it, might protract the payment of what is
 “ due from them; and render the collection of the public
 “ revenue either impracticable, or an endless source of trouble
 “ and litigation. But to prevent the abuse of this power,
 “ there should be courts of justice ready to punish oppression,
 “ and exaction: and the people must be satisfied that the
 “ remedy will be certain and effectual; and that it can be
 “ expeditiously obtained.” The wisdom of this principle is con-
 firmed by the sentiments of a celebrated writer on justice and
 polity, already referred to*, who observes, that “ the establish-
 “ ment of courts of justice is particularly necessary to decide
 “ the causes relating to the revenue; that is, all disputes that
 “ may arise between those who are employed in behalf of the
 “ prince and the subjects;” and adds that, “ in all well regula-
 “ ted states, in countries that are really states, and not the do-
 “ minions of a despotic prince, the ordinary tribunals decide
 “ the causes in which the sovereign is concerned, with as
 “ much freedom as those between private persons.” In pur-
 suance of this just practice, and to render the judicial authority,
 in this portion of the British state, effectual, in all cases, for the
 protection of private rights; or to use the terms of the pream-
 ble to Regulation III, 1793, “ to ensure to the people of this
 “ country, as far as is practicable, the uninterrupted enjoy-
 “ ment of the inestimable benefit of good laws duly administer-
 “ ed,” government determined “ to divest itself of the power
 “ of interfering in the administration of the laws and regula-
 “ tions in the first instance; reserving only, as a court of ap-

Confirmed by
 the sentiments
 of a celebrated
 writer on justice
 and polity.

Consequent de-
 terminations of
 Government, as
 stated in the
 preamble to Re-
 gulation III,
 1793.

“ appeal or review, the decision of certain cases in the last resort ;
 “ and to lodge its judicial authority in courts of justice ; the
 “ judges of which should not only be bound by the most so-
 “ lemn oaths to dispense the laws and regulations impartially ;
 “ but be so circumstanced as to have no plea for not discharg-
 “ ing their high and important trust with diligence and up-
 “ rightness.” It was resolved, “ that the authority of the laws
 “ and regulations, so lodged in the courts, shall extend, not
 “ only to all suits between native individuals, but that the offi-
 “ cers of government, employed in the collection of the reve-
 “ nue, the provision of the Company’s investment, and all
 “ other financial concerns of the public, shall be amenable to
 “ the courts, for acts done in their official capacity, in oppo-
 “ sition to the regulations ;” and that government itself, in su-
 “ perintending these various branches of the resources of the
 “ state, might be precluded from injuring private property, it
 “ was further determined “ to submit the claims and interests of
 “ the public, in such matters, to be decided by the courts of
 “ justice, according to the regulations, in the same manner as
 “ suits between individuals.”

It was accordingly declared by Section X, Regulation III,
 1793, (extended to Benares by Section VII, Regulation VII,
 1795, and re-enacted for the ceded provinces by Section VII,
 Regulation II, 1803,) that “ collectors of the revenue and their
 “ assistants and native officers, commercial residents and agents,
 “ and their assistants and native officers employed in the provi-
 “ sion of the investment, salt agents, and their assistants and native
 “ officers, concerned in the manufacture of salt, the collectors of
 “ the customs, and their assistants and native officers, employed
 “ in the collection of the customs, the mint and assay masters,
 “ and their assistants and native officers, are amenable to the
 “ zillah or city court, in the jurisdiction of which they may
 “ reside, or carry on the public business committed to their
 “ charge, for any acts done in their official capacity, in oppo-
 “ sition

Section X, Re-
 gulation III,
 1793, declaring
 certain public
 officers, Euro-
 pean and na-
 tives, amenable
 to the civil
 courts, for act
 done in their
 official capac-
 ities, in oppo-
 sition to the re-
 gulations.

Further provision by Section XI, Regulation III, 1793, for a redress of grievances, under the regulations, by acts done in pursuance of special orders from the Governor General in Council, or from the boards of revenue and trade.

“ sition to any regulation printed and published in the manner
 “ directed in Regulation XLI, 1793.” It was further prescribed by Section XI, Regulation III, 1793, (extended to Benares by Section VII, Regulation VII, 1795, and re-enacted for the ceded provinces by Section XV, Regulation II, 1803,) that
 “ if a native, or any other person not being a British subject,
 “ shall consider himself aggrieved, under any regulation printed and published in the manner directed in Regulation
 “ XLI, 1793, by an act done by any of the officers of government described in Section X, pursuant to a special order
 “ originating with the Governor General in Council, or the
 “ board of revenue, or of trade, the officer by whom the act
 “ may be done, is not liable to be sued for it. In such cases,
 “ government is to be considered as the defendant; and the
 “ person deeming himself aggrieved is to present a petition to
 “ the judge of the dewanny adawlut of the zillah, or city, to
 “ which the officer, by whom the act complained of may have
 “ been done, shall be amenable in his public capacity; stating
 “ wherein he considers himself injured under the regulations;
 “ and praying, that the Governor General in Council will
 “ order the court of dewanny adawlut, in which the cause
 “ may be cognizable, to try the points or matters contested,
 “ agreeably to the regulations. The judge, to whom the
 “ petition may be presented, is to forward it immediately to
 “ the Governor General in Council; who, provided he shall
 “ not think it proper to afford the redress that may be solicited by the petitioner, and the courts of justice shall be competent to try the cause, will direct the court, in which it may
 “ be cognizable, to proceed to the trial of it. If the Governor General in Council shall order the cause to be tried, the
 “ court is immediately to send a written notification of the
 “ order to the complainant; and the cause is to be considered
 “ as filed in the court from the date of the notification. The
 “ court is then to proceed to try the suit, under the same rules
 “ and regulations as are prescribed for the trial of suits between individuals.”

PREVIOUSLY

PREVIOUSLY to a specification of these rules, or the principal of them, it will be proper to state what courts have been established for the administration of civil justice, in the first instance, with their respective jurisdictions.

Zillah and city courts established, for administering civil justice, in the full instance.

By Regulation III, 1793, twenty-three zillah, and three city, dewanny adawluts, or courts of civil judicature, were established in the several districts of Bengal, Behar, and Orissa; and in the cities of Dacca, Moorshedabad and Patna. Of this number, two zillah courts, viz. that of the twenty-four pergunnahs, annexed to zillah Hooghly, and that of Cooch Behar, annexed to zillah Rungpore, have been discontinued; but, under Regulations XXXVI, 1795, and VII, 1797, two additional courts have been instituted for the zillahs of Hooghly and Backergunge. Two courts have also been added to the province of Orissa, for the divisions of Cuttack, specified in Regulation IV, 1804. By Regulation VII, 1795, one city, and three zillah courts were established for the province of Benares; of which the Ghazeepore zillah court has been since abolished, and its jurisdiction divided between the other three courts. By Regulation II, 1803, seven zillah courts were established in the provinces ceded by the Nuwab Vizeer. And by Regulation IX, 1804, the territories ceded by the Peshwa, and Doulut Rao Sendheeah*, have been divided into six zillahs; in each of which a civil court is established. These courts are all superintended by an European judge; assisted by a

R III, 1793
§ II.

R XXXVI,
1795. VII
R VII, 1797.
§ II.

R IV, 1804.
§ II.
R VII, 1796.
§ II.

R II, 1803.
§ II.

R IX, 1804.
§ III, and IV.

Constitution of
these courts.

* The same Asiatic words being sometimes spelt differently in this Analysis, it is necessary to remark, that no correct system of orthography has been attempted; and that the names of persons, places, and things, are in general written according to established practice; especially such as occur in the regulations: where any accentual marks have been used, â, é, î or ee, ô, û or uô, express the long vowels; a or u, e, i, o, oo, the short vowels; ai or y', and au or ou, the diphthongs composed of the first and third, and first and fifth, vowels; and â the peculiar Arabic letter, *ayn*, which Sir WILLIAM JONES, (whose system of orthography has been chiefly followed) proposes to note uniformly by a circumflex. It has not however been deemed necessary, in this tract, to adopt his discriminative notation of the consonants; though well calculated for the object intended by him; and for all works, in which a precise discrimination of the original characters is required.

Mahomedan and Hindoo law officer; by a register, who is a covenanted servant of the Company; in some instances by an assistant to the register, being also a covenanted servant; and by an establishment of native ministerial officers. Previously to entering upon the execution of the duties of his office, the judge is required to take and subscribe an oath, of which the form is prescribed in the regulations referred to; and the substance of which has been already stated in the preceding section. By the same regulations the use of an official seal is directed: the courts "are to be held in a large
"and convenient room, in the city or place at which they
"are respectively established, three days in every week; or
"oftener, if the state of the business should render it necessary;" and "no rule, order, proceeding or decree is to be
"made, but on court days, and in open court."

R. III, 1793.
§ III, V, and
VI.

R. II, 1803.
§ XIII, and
XIV.

Their local jurisdiction

R. III, 1793.
§ IV.

R. VII, 1795.
§ IV.

R. II, 1803.
§ III

What persons
amenable to
them.

R. III, 1793.
§ VII, and I.C.

R. XXVIII,
1793. § II, to
VIII.

R. II, 1803.
§ IV, and VI.

R. XVIII, 1803.
§ II, to VIII.

THE local jurisdiction of the several courts extends to all places that are, or may be included, within the limits of the zillahs and cities in which they are respectively established. All natives, as well as Europeans and other persons not British subjects, residing out of Calcutta, are amenable to the jurisdiction of the zillah and city courts; which are further declared to have jurisdiction over all British subjects, excepting King's officers, serving under the presidency of Fort William, and the military officers and covenanted civil servants of the Company, so far as not to allow them to reside, at a greater distance than ten miles from Calcutta, unless they execute a bond, the form of which is prescribed in Regulation XXVIII, 1793; (extended to Benares by Regulation XXIV, 1795, and re-enacted for the ceded provinces by Regulation XVIII, 1803;) to render themselves amenable to the court within whose jurisdiction they may reside, in all suits of a civil nature that may be instituted against them by natives, or persons not British subjects, in which the amount claimed may not exceed five hundred sicca rupees. It is provided by the
same

same regulations, that when any British subject, or other person not amenable to the jurisdiction of the zillah and city courts, shall institute a suit against a person amenable thereto, he (the plaintiff) is to execute an instrument, of the nature of an arbitration bond, (the amended form of which is contained in Section II, Regulation XI, 1797,) declaring himself subject to the jurisdiction of the court, for so much as shall relate to the suit in question; and binding himself to abide by the award or decree of the court, in the same manner and to the same extent, as the jurisdiction of the court is valid against the defendant. If the plaintiff refuse to execute such instrument, his plaint is not to be received or filed.

R. XVIII,
1793. § VII.

R. XI, 1797.
§ II.

R. XVIII,
1803. § VII.

THE equity and necessity of the latter of these provisions, respecting British subjects of every description, who may have recourse, as plaintiffs, to the zillah or city courts, for the recovery of their demands upon persons amenable to those courts, are evident. To have the benefit of the local court, in recovering what is justly due to them from the native inhabitants, or others within its jurisdiction, without being themselves bound to observe and fulfil the judgment passed upon their respective claims, would be manifestly inconsistent with the ends of justice. The reasons stated in the preamble to Regulation XXVIII, 1793, (and Regulation XVIII, 1803, for the ceded provinces,) evince also the propriety of rendering British subjects, not in the service of the King or Company, who reside in the interior parts of the country, generally for commercial purposes, amenable as defendants, to the civil court of the jurisdiction in which they reside, in suits for a small amount, that could not be prosecuted, without great inconvenience, and disproportionate expence, in the supreme court at the presidency. Such British subjects
“ may recover with facility, and at a moderate expence, their
“ claims upon the native or other inhabitants of the Com-
“ pany’s territories, who are declared amenable to the courts

Equity and necessity of provisions respecting British subjects.

Preamble to
Regulations
XXVIII, 1793
and XVIII,
1803.

“ of dewanny adawlut, by instituting a suit against them in
 “ the court of the zillah or city in which they reside; but
 “ the natives of the country, and all other persons subject to
 “ the jurisdiction of the dewanny courts, have no means of
 “ obtaining redress against such British subjects, except by
 “ suing them in the supreme court of judicature at Calcutta.
 “ The manufacturers therefore, as well as the immediate cul-
 “ tivators of the soil, and the lower orders of the people,
 “ with whom such British subjects necessarily have extensive
 “ dealings, are in fact precluded from all redress in the event
 “ of their being wronged; as it is obviously impracticable for
 “ the generality of persons of these descriptions to quit their
 “ families and occupations, and perform a journey, probably
 “ of several hundred miles, to sue for small demands, in a
 “ court proceeding and deciding according to laws, and in a
 “ language, with both of which they are equally unacquaint-
 “ ed, and at an expence that the opulent only can support.”

As the Coffeas, and other mountaineers on the frontier of Sylhet, from whom chunam, and various articles of trade are purchased, could not, from their situation, prosecute claims upon British subjects for sums exceeding five hundred rupees, in the supreme court, at Calcutta, it is further enacted

R. I, 1799.
 § VII.

by Section VII, Regulation I, 1799, that “ such British born subjects as may be permitted to reside within the district of Sylhet, (with the above exception of King's officers, and civil and military servants of the Company) shall, in addition to the form of bond prescribed by Section III, of Regulation XXVIII, 1793, execute a bond of similar tenor, but without the limitation of five hundred rupees, rendering themselves amenable to the jurisdiction of the zillah dewanny adawlut, in all suits for whatever amount or value, that may be instituted against them by any of the inhabitants of the hills on, or contiguous to, the Company's frontier in Sylhet.”

Exceptions to
 the general rule,

THE only exception expressly provided by the regula-
 tions,

tions, to the general rule, declaring natives amenable to the civil courts of justice, is contained in Section VIII, of Regulation II, 1803; whereby it is enacted, in conformity with the sixth article of a treaty concluded with the Nuwab of Furruckhabad, on the 4th of June 1802, that "the authority of the court of adawlut shall not extend to the person of the Nuwab; but as his connections and dependants are undefined, and as it is the object of the British Government to introduce a fair and impartial administration of justice, throughout the province of Furruckabad; it is agreed, that whatever complaint may be preferred against any of the Nuwab's dependants, shall, in the first instance, be referred to the Nuwab; and in the event of the complainant not receiving speedy justice, or being dissatisfied with the Nuwab's decision, the complaint shall be decided in the adawlut." It is however understood, that the Nazim of Bengal is also, by his station, personally exempted from the common process of the civil courts; and the following provision has been made in Section X, of Regulation XVI, 1793, for the reference of certain cases to him in the first instance:— "In complaints brought before any zillah or city court, in which it shall appear either by the application of the Nazim, or the representation of the defendant, at or before the time of giving in his or her answer, or by the petition of the complainant, that both parties are servants or relations of His Excellency, or the widows or female descendants of the former Nazims of Bengal; the parties are to be referred for justice to the Nazim, or to any person whom he may appoint to dispense it. Upon a complaint being preferred against any servant or servants of His Excellency, by persons of a different description, the court in which the complaint may be instituted, is either to refer it to His Excellency, or to hear it in the ordinary manner, according to its discretion; *taking care at all times, and in all matters, to pay every proper attention to the dignity and long established rights of the Nuwab.* Provided however, that in all cases

declaring natives amenable to the civil courts.
Reg. II, 1803,
§ VIII.

Nuwab of Furruckhabad.

Nazim of Bengal.

Reg. XVI,
1793, § X.

cases in which either the plaintiff or defendant shall prefer the jurisdiction of the courts, to that of the Nazim, the judge is to try and determine the suit, in the same manner as if neither of the parties had been persons of the description specified in this section."

Reg. XV, 1795,
§ III.

Rajah of Benares.

A further provision has been made by Section III, of Regulation XV, 1795, for excepting from judicial cognizance, and referring to the Rajah of Benares, subject to the control of the collector of that province, and ultimately to the decision of the Governor General in Council, complaints relative to undue exactions of revenue, breach of agreement in respect to pottahs (leases), or the resumption of lands exempted from the payment of revenue, in the jagher, ultumgha, and other private lands appertaining to the Rajah, as specified in the section above noticed. But this exception, made in pursuance of an agreement concluded by the resident at Benares with Rajah Maheepnarain, under date the 27th October 1794, does not extend to any other complaints or suits preferred against the Rajah of Benares; although, in common with the principal Mahajuns, or bankers, of the city of Benares, known under the denomination of *Nouputty*, and the *Baboos*, or persons of his blood and family, he is exempted by Section X, of Regulation VIII, 1795, from furnishing the personal security, required from other defendants in civil causes, during the trial of them in the first instance; and the court receiving a claim upon such privileged defendants, is directed to issue, instead of the usual summons, merely a notice to them; containing a short account of the demand, and fixing a day for them to appear and answer the same, either in person, or by an authorized representative.

Reg. VIII, 1795,
§ X.

That suits are cognizable by the zillah and city courts.

Reg. III, 1793,
§ III.

"The zillah and city courts respectively are empowered to take cognizance of all suits and complaints, respecting the succession or right, to real or personal property, land-rents,

rents, revenues, debts, accounts, contracts, partnerships, marriage, cast, claims to damages for injuries, and generally of all suits and complaints of a civil nature," in which the defendant may be amenable to their jurisdiction; "provided the landed or other real property to which the suit or complaint may relate, shall be situated, or in all other cases, the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall reside as a fixed inhabitant, within the limits of the zillah, or city, over which their jurisdiction may extend." The town of Calcutta, which is under the immediate jurisdiction of the supreme court, not being comprised in that of any zillah or city court, the above powers do not include the cognizance of any suits for land, or other real property, situated within the limits of Calcutta; nor any personal actions, against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the supreme court*. The special or limited jurisdiction of the zillah and city courts, in particular cases, provided for by the regulations, will be hereafter noticed: but it may be remarked in this place, that when a landed estate is situated in two, or more, zillah or city jurisdictions, it has been held by the sudder dewanny adawlut to be consistent with the spirit

R. II, 1808,
§ V.

Exception,
with respect to
the town of
Calcutta.

R. III, 1793,
§ XVII.

R. II, 1808,
§ XII.

Claims to es-
tates, in two
or more juris-
dictions, by
what court to
be tried.

* Under Section XVII, Regulation III, 1793, the dewanny adawlut of the zillah of the twenty-four pergunnahs was authorized to entertain suits, "concerning marriage or cast, in which no money or other valuable thing may be demanded, although the cause of action shall have arisen, or the defendant may reside, within the limits of the town of Calcutta." But the zillah court of the twenty-four pergunnahs having been discontinued, it may be questioned whether this power is now vested in the judge of zillah Hooghly; and the exercise of it does not appear requisite, as the supreme court has jurisdiction in all cases of marriage and cast. By Section VIII, 21 GEORGE III, Cap. 70, it is enacted, that the "supreme court shall not have, or exercise, any jurisdiction, in any matter concerning the revenue, or concerning any act or acts, ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor General and Council." But by Section XVII, of the same Statute, the authority of that court is reserved, as before, in "all manner of actions and suits against all and singular the inhabitants of Calcutta." It has therefore been directed by government, (on a reference from the sudder dewanny adawlut in November 1797) that whenever it may be necessary to apprehend a revenue defaulter, resident in Calcutta, application for that purpose be made, through the board of revenue, to the Governor General in Council, who, if it appears to him proper, will order the attachment of the defaulter's person by the revenue officers.

and

and meaning of the regulations, as well as conducive to justice, that a claim to the entire estate should be received, and tried, by the court of the jurisdiction in which the greater part of the estate may be situated*; unless it be deemed proper, in any such case, by the Governor General in Council, or by the sudder dewanny adawlut, to direct the suit to be tried and determined, in the first instance, by the provincial court of appeal, in conformity with Section VI, Regulation V, 1793.

Civil courts prohibited from interference in criminal cases. Except for contempt, and perjury.
R. III, 1793, & XVIII.
R. IV, 1793, & XIV, and XXI.
R. II, 1803, & XI.
R. III, 1803, & VIII, and XXII.

This restriction not meant to prohibit a civil action for damages in cases of personal injury.

THE civil courts are "prohibited from interfering, in any respect, in any cause or matter of a criminal nature, declared cognizable by the magistrates," and criminal courts, except for contempt, and perjury, committed in open court; the former of which, as well as any undue arrogation, or illegal exertion, of judicial authority, they are authorized to punish, by a fine not exceeding two hundred rupees; and in cases of wilful and corrupt perjury, in any cause or matter depending in court, the judge is immediately to commit the offender to close custody to take his trial before the court of circuit. This restriction against the interference of the civil courts, in cases declared cognizable by the criminal courts, being obviously intended only to prevent the former, whose province is the reparation of private injuries, from exercising the powers vested in the latter, for the ends of public justice; it must not be understood to prohibit a civil action for damages in cases of personal injury, as allowed by the laws of England; instead of, or in addition to, a criminal prosecution. On the contrary, the criminal courts, which under Section XXII, Regulation IX, 1793, might have directed a pecuniary compensation to be made to the party injured, having been

* On the 15th March 1798, the court of sudder dewanny adawlut directed that the claim of Rango BISHUNKOONWUR, to lands situated partly in zillah Bardwan, and partly in zillah Hooghly, should be tried by the judge of the former division. In another case, wherein the disputed lands were on the boundaries of two zillahs in the Dacca division; the provincial court of that division were ordered to try the suit, in the first instance.

expressly forbidden, by Regulation XIV, 1797, to adjudge pecuniary compensations, or damages, (the reimbursement of costs excepted) in any criminal prosecution; it is indispensably necessary, for maintaining the settled principle of law, that every right when withheld must have a remedy, and every injury its proper redress*, to consider the power vested in the civil courts, of receiving all suits for "claims to damages for injuries," as extending, not only to every injury of property; but also to every personal injury; whether by actual bodily hurt or insult, by unlawful imprisonment, or by malicious defamation, affecting character, cast, or livelihood. By Section VII, Regulation II, 1805, however, "all suits and complaints for penal damages are required to be preferred to the proper courts of justice, within one year after the cause of action shall have arisen; or as soon afterwards as it may be in the power of the party aggrieved to prefer the same." And with regard to all actions of this description which are merely personal, arising *ex delicto*, for wrongs committed by the defendant, and not involving any claim to property, or compensation for the loss of it, the English rule of law is applicable, that *actio personalis moritur cum persona* †.

R. II, 1805.
§ VII.

THE zillah and city courts are also "prohibited from entertaining any cause, which from the production of a former decree, or the records of the court, shall appear to have been heard and determined by any former judge, or any superintendent of a court having competent jurisdiction. If any doubt arise, respecting the competency of the former jurif-

Restricted also from entertaining a cause heard and determined by a competent court.
R. III, 1793.
§ XVII.
R. VII, 1795.
§ X.
R. II, 1803.
§ X.

* Vide BLACKSTONE, Book III, Cap. 7: wherein the maxim quoted, is stated to be "A settled and invariable principle in the laws of England." It may be said that the proper redress for criminal injuries is inflicted by the criminal courts. But punishment of the offender, however proper to deter him, or others, from committing the like offence, is no retribution to the party injured; and it might perhaps be expedient to reinvest the criminal courts with a qualified power of adjudging such reparation in certain cases, as well to overcome the general reluctance to prosecute in those courts; as to obviate the necessity of a second prosecution, for damages, in the civil courts.

† BLACKSTONE, Vol. III, page 202.

dition, the judges are to report the circumstances to the *sudder dewanny adawlut* and wait the instructions of that court*." And after "a suit shall have been instituted in the court of any *zillah* or city, in which it may have been cognizable, no other *zillah* or city court is to entertain a suit for the same cause of action; but on proof of the institution of a prior suit, in another competent court, for the same cause of action, the court in which the second suit may be brought is to dismiss it with costs. The judge is further empowered to impose a fine in such cases, as well as in all cases wherein the suit may appear to him frivolous, vexatious, or groundless; " in such amount as he may think proper, upon a consideration of the nature of the case, and the situation, and circumstances in life, of the offender."

R. III. 1793
§ XII.
It. II, 1803.
§ IX.

Or a second
suit, after the
institution of a
prior suit in an-
other court.

A fine, besides
costs, may be
imposed in such
cases, as in all
vexatious or
groundless
complaints.

Intention of
preceding rules.

THE salutary intention of these rules is, obviously, to check litigiousness; secure the right and possession of property held under judicial decisions; and guard against a perversion of the public courts of judicature, from the just and benevolent ends of their institution, to become the instruments of private enmity, persecution and oppression. In applying them therefore, this intention should be strictly attended to; and error, or ignorance, should not be blended with deliberate fraud, or malice: nor can the restriction against rehearing a cause, already heard and determined, be considered applicable to any suit dismissed, in the first instance, for some neglect or default only; without an investigation of, and decision upon, the merits of the case. Sufficient provision has

* On the 3d August 1795, the court of *sudder dewanny adawlut*, in answer to a reference from the judge of Chittagong, whether an application to the committee of revenue, in a case of landed property, was to be considered as made to a court of competent jurisdiction, within the meaning of Section XVI, Regulation III, 1793; declared their opinion that it was not; both as the court were not informed of any power vested in the committee of revenue, to take cognizance of such cases, since the institution of courts of *dewanny adawlut* in 1772; and as these courts, from the time of their institution, have been the regular constituted authorities, for the receipt, investigation, and decision, of all claims, (this de-

indeed been made by the regulations, to prevent or remedy an injurious misapplication of them in this respect; as well as to authorize a revision of erroneous judgments, in causes not appealable, upon sufficient grounds being stated to the satisfaction of the sudder dewanny adawlut; as will be subsequently more fully specified.

By Section XIV, Regulation III, 1793, the zillah and city courts of Bengal, Behar, and Orissa, were prohibited from "hearing, trying or determining the merits of any suit whatever; against any person or persons, if the cause of action shall have arisen previous to the 12th August 1765;" (the date of the dewanny grant to the Company for the above provinces;) "or any suit whatever, against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it; unless the complainant can shew, by clear and positive proof, that he had demanded the money, or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money," (within the last twelve years, so as to constitute a new ground of action within the limited period;) "or that he directly preferred his claim within that period," (vizt. within twelve years after the origin of the cause of action.) "for the matters in dispute, to a court of competent jurisdiction, to try the demand; and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress." Similar prohibitions were extended, by Section VIII, Regulation VII, 1795; to the province of Benares, with a substitution of the 1st July 1775, (the date of the actual cession of that province to the Company, under the treaty with the Nuwab Vizier, of the 21st May preceding;) and with an exception of claims founded on bonds, which may have been in a course of

Limitations of time for the cognizance of actions in the zillah and city courts.

R. III. 1793.
§ XIV.
Bengal, Behar, and Orissa.

Example to Reg. IV. 1793.

R. VII. 1795.
§ VIII.
Benares.

• payments

payment by instalments; or of which any proportion may have been paid within twelve years previous to the institution of the suit. Also of all claims on mortgages; the period for rendering which unactionable was left to be determined "by the law of the religion of the defendant." The claims of village zemindars, for restoration to their zemindarries, of which they were dispossessed by the Rajahs BULWUNT SING and CHYT SING, before the year 1775; and whose lands, in many instances, were farmed out at the period of making the decennial settlement of Benares (1789), in consequence of Rajah MAHEEPNARAIN's declining, at that time, to restore them, though he subsequently acquiesced in the measure as specified in the fifth clause of Section III, Regulation I, 1795; are likewise virtually excepted by the provision in that clause, from the general limitation of 1st July 1775. By the first and second clauses of Section XVIII, Regulation II, 1803, the courts of adawlat, in the provinces ceded by the Nuwab Vizier on the 10th November 1801, "are prohibited from "hearing, trying, or determining, the merits of any civil suit "whatever, if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which "the petition for the institution of such suit shall be presented to the court;" and the powers vested in them, under this limitation, to receive and try suits in which the cause of action may have originated prior to the 10th day of November 1801, are declared to be restricted to "suits of a "private nature, between individuals; of which cognizance "would have been taken by the courts, officers, or authorities, established for the administration of justice under the "government of the Nuwab Vizier." By the third clause of the same section, after twelve years shall have elapsed from the date of the cession of these provinces, the general limitation of twelve years, with the exceptions before cited from Section XIV, Regulation III, 1793, is extended to them; under a provision, to take effect from the same period, (viz. the

R. I, 1795,
§ III.
Preamble to
Reg. II, 1803.

R. II, 1803,
§ XVIII.
Ceded provinces.

the 10th November 1813;) "that it shall not be competent
 " to the zillah courts, under the powers vested in them by
 " this clause, to hear, try, or determine, the merits of any
 " civil suit whatever, if the cause of action shall have arisen
 " previous to the 10th day of November 1801."

THE period of twelve years, adopted in all the regulations
 abovementioned, appears to have been established, when the
 administration of civil justice was first committed to the ser-
 vants of the Company, on the institution of courts of de-
 canny adawlut in 1772; and in the plan, then proposed by
 the committee of circuit, it is remarked, that "by the Ma-
 homedan law all claims which have lain dormant for twelve
 years, whether for land or money, are invalid. This also
 is the law of the Hindoos; and legal practice of the coun-
 try." This observation does not appear to be correct with
 respect to the Hindoo and Mahomedan laws; though it may
 have been, with regard to the legal practice of the country;
 and whether previously established, or not, the rule having
 now been so long in force, it would be improper to abrogate
 it. But the declared grounds on which this limitation was in-
 troduced, viz. "the litigiousness and perseverance of the na-
 tives of this country, in their suits and complaints, often
 productive not only of inconvenience and vexation to their
 adversaries, but also of endless expence and actual oppres-
 sions", are not applicable to suits for the recovery of
 public rights and dues, instituted on the part of Govern-
 ment, under the provisions made by the Regulations for sub-
 jecting the public claims and interests to the cognizance and
 decision of the established courts of justice. For such suits
 and claims, the unlimited time, heretofore allowed by the
 laws of England, (as by those of the Hindoos) has been latterly
 restricted to a period of sixty years; * being the largest period

Prescribed by
 Regulation II,
 1801
 Expiration of
 limit of twelve
 years

Not applicable
 to public suits,
 instituted on the
 part of Govern-
 ment

* By the Statute IX, Geo. III, Cap. 16. Vide BLACKSTONE, Vol. III, P. 307.

Nullum Tenens annuit regi fixed

Period of 60 years allowed by the Hindoo law to establish a right of property in cases of unmolested possession, without proof of a bad title.

Distinction between *bonâ fide* and *malâ fide* possession.

fixed for the judicial cognizance of the claims of individuals in particular cases. This period is recognized by the provisions of the Hindoo Law in regard to individuals; and is not incompatible with those of the Mahomedan law. Under the former it is applied to private rights and claims, in cases of unmolested possession, without proof of a bad title. And the distinction between *bonâ fide* possession, under a title believed good and sufficient, and *malâ fide* possession, obtained by fraud or violence, and therefore known to be insufficient, has been taken in the Hindoo Law, as in the laws of all countries, wherein the long and peaceable possession of things capable of becoming private property, under a just title, believed by the possessor to have vested in him a full right of property, is held and admitted to have established such right of possession and property; or at least to bar any legal claim against the possessor. On consideration therefore of the several circumstances stated, (as set forth in the preamble to Regulation II, 1805), and with a view to provide more effectually for securing the rights of the public, and of individuals, in the several cases recited, the following explanatory, and additional, rules have been recently enacted by His Excellency the Most Noble the Governor General in Council.

Explanatory and additional provisions made by Regulation II, 1805.

Section II.

“ THE limitation of twelve years for the commencement of civil suits, under certain provisions and exceptions, which, in pursuance of former rules and practice, has been continued and prescribed by Section XIV, Regulation III, 1793; Section VIII, Regulation VII, 1795; and Section XVIII, Regulation II, 1803; shall not be considered applicable to any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by, or in behalf of, Government, with the sanction of the Governor General in Council, or by direction of any public officer or officers, who may be duly authorized to prosecute the same on the part of Government. All claims

on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) shall be heard, tried, and determined in the several courts of civil justice, to which the cognizance thereof may properly belong, under the general regulations which have been or may be hereafter enacted, if the same be regularly and duly preferred at any time within the period of sixty years from and after the origin of the cause of action: provided that such cause of action shall not have originated, within the provinces of Bengal, Behar, and Orissa, before the 12th August A. C. 1765; or within the province of Benares, before the 1st July A. C. 1775; or within the provinces ceded by the Nawaub Vizier before the 10th November A. C. 1801; being the periods of the Company's accession to the civil government of the above provinces respectively."

Handwritten notes:
 If claimant
 which is
 can be proved
 good title
 not to be
 the period
 necessary
 thoroughly
 executing
 the matter
 settled

" THE limitation of twelve years fixed by Section XIV, Regulation III, 1793, Section VIII, Regulation VII, 1795 and Section XVIII, Regulation II, 1803, shall also not be considered applicable to any private claims of right to lands, houses, or other permanent, immovable property; if the person or persons in possession of such property, when the claim of right thereto may be preferred in a competent court of judicature, shall have acquired possession thereof by violence, fraud, or by any other unjust, dishonest means whatever; or if such property shall have been so acquired by any other person or persons from whom the actual occupant or occupants may have derived his or their title, and shall not have been subsequently held under a just and honest title (such as inheritance, purchase, fair donation, or any other fair title, believed to have conveyed a right of possession and property) during

Section 111.

Clause first.

a period of twelve years, antecedent to the time of preferring a claim of right thereto in a competent court: provided that such violent, fraudulent, unjust, or dishonest acquisition be established to the satisfaction of the court in which the claim may be preferred; or, if the suit be appealable, to the satisfaction of the proper court of appeal."

"In all such cases, viz when the original cause of action may have arisen more than twelve years before the institution of the suit, and the claim may not be cognizable under the exceptions and provisions contained in the regulations and sections above cited; but may be nevertheless cognizable under the provision made by the preceding clause, from the defendant's having acquired possession of the claimed property by violence, fraud, or other unjust and dishonest means, or from the property, after being so acquired by any other person, not having been subsequently held by the present occupant, and his predecessors, under a just and honest title, during the prescribed period of twelve years: the plaintiff shall set forth the same distinctly, either in his petition of plaint, or in his replication. The court, after taking the answer and rejoinder of the defendant, shall, if the alleged unjust and dishonest acquisition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his just and honest acquisition of the property claimed, or the just and honest possession thereof by himself and his predecessors, during more than twelve years; after which, the court shall determine whether the suit in question be cognizable under the present rule, or otherwise; and if such determination be in favor of the plaintiff; or in appealed cases, if a determination for the cognizance of the suit be passed by the court of appeal; the merits of the plaintiff's claim of right shall be heard, tried, and determined, notwithstanding the lapse of time, in like manner.

as if the claim had been regularly preferred within twelve years after the origin of the cause of action."

" PROVIDED, that nothing in the preceding clause, or in any part of the existing regulations, shall be held to authorize the cognizance of any suit whatever, in any court of justice, if the cause of action shall have arisen sixty years before the institution of such suit. Nor shall any plea on the part of the plaintiff, for the nonprosecution of his claim of right during a period of sixty years, after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed, after the elapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred. Moreover, although the property claimed may have been acquired by an insufficient title within the period of sixty years hereby fixed as the utmost limit for the cognizance of any claims in the established courts of justice; if the property so acquired shall have descended by inheritance to the person in possession when the claim thereto may be presented, after an elapse of twelve years; or if such person shall have obtained just and honest possession thereof by purchase, fair donation, or by any other title believed to be just and valid, and not appearing to be in any respect collusive, for the purpose of depriving the plaintiff of his right; and either such occupant himself, or any other person in his behalf, or from whom the property may have been obtained under any of the titles aforesaid, or the whole in succession, shall have held quiet and unmolested possession, under a title believed to be just and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent court; the provisions made by the foregoing clauses shall not be considered applicable to any private claims to property so circumstanced; which are therefore to be deemed inadmissible, as heretofore, after twelve years from the origin of the cause

Clause third

of action, unless the same be cognizable under the exceptions and provisions already in force."

Clause fourth.

" PROVIDED further, that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage, or deposit, wherein the occupant of the land or other property may have acquired, or held, possession thereof as mortgagee, or depositary only, without any proprietary right; nor in any other case whatever wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor."

Limitation of
time in summary
cases.

THE further provisions contained in the same regulation, whereby a limitation of time is fixed for the delivery of applications to the courts of justice, to obtain the summary inquiry and process authorized in cases of arrears of rent; and of forcible dispossession from land, crops, or other property; will be hereafter noticed, with the special rules and process to which such provisions refer. It has been already observed that all complaints for penal damages, (defined to comprehend all suits for pecuniary penalties demandable by individuals, on account of any act or omission, in opposition to the laws and regulations, exclusive of a compensation for actual losses;) for the recovery of which by judicial process no specific period may have been fixed; are required to be preferred within one year. The same period is fixed for preferring " all suits, complaints, and informations, cognizable by the civil courts, for the recovery of any fine, or penalty, receivable by government, or by the informer, on account of the unlicensed manufacture or sale of intoxicating liquors or drugs; the illicit manufacture or sale of salt or opium; the fraudulent evasion of the stamp duties prescribed by the regulations; or on account

And for the recovery of penal damages, fines, and penalties.

count of any other fines, or penalties, recoverable, either by a regular suit, or by summary process, in the courts of dewanny adawlut, under any regulation in force, which may not have fixed a specific period for the recovery thereof." And no such suit is to be admitted after the prescribed time, unless prosecuted on the part of government, and sufficient cause be assigned why it was not brought forward within one year after the commission of the act upon which the fine or penalty is demandable.

IN stating concisely the principal rules enacted, "for receiving
"trying, and deciding, suits or complaints" declared cognizable in the zillah and city courts, it is necessary to premise, that these relate to the general course of proceeding in regular suits, for which a summary or other special process has not been prescribed. It may also be previously remarked that the judges of the zillah and city courts, in common with the provincial courts and fudder dewanny adawlut, are "prohibited
"corresponding by letter with parties in suits, process, or matters, depending before them; or coming within their cognizance. If a party in a suit, or any person amenable to the
"jurisdiction of the court, shall have any matter to represent to
"the court; he is either to appear in the court in person and
"represent the matter in writing, or make the representation in
"writing through an authorized vakeel (pleader). The court
"is to pass whatever order, upon the representation, may appear to it proper, consistently with the regulations; and to
"direct a copy of the order to be delivered to the person making the representation, or to his vakeel, under the seal of the
"court, and attested by the register." It is further provided, for all the civil courts, that in cases within their jurisdiction, for which no specific rule may exist, they are to act according to
"justice, equity, and good conscience."

Rules for receiving, trying, and deciding, suits cognizable in the zillah and city courts.

Chiefly applicable to regular suits.

R. III, 1793.
§ XIX.

R. II, 1803.
§ XX.

Prohibition of correspondence with parties.

Representations to the court, in what manner to be made.

Court to pass an order and deliver a copy of it.

R. III, 1793.
§ XXI, R. II, 1803. § XVII.

General provision, where no specific rule exists.

R. IV, 1793.
§ II, extended

The first rule for receiving suits in the zillah and city courts

to Benares by
R. VIII, 1795.

Rule for receiving
plaint and
pleadings.

Whether any
viva voce argu-
ment, or motion
be allowable.

R. IV, 1793,
§ III.

R. III, 1803,
§ III.

What the plaint
is to contain.

is, that " no complaint be received, but from the plaintiff;
" nor any answer to a complaint, but from the defendant; or
" their respective vakeels duly empowered. Nor is any per-
" son to be permitted to do any act, or to be heard, *viva voce*,
" in any stage of a cause, excepting the plaintiff or defendant,
" or their vakeels or witnesses." The regulations for the ap-
pointment and control of vakeels, or native pleaders, in the
civil courts, will be subsequently mentioned. And it will be
sufficient to remark on the rule cited, (which is common to all
the civil courts), that the terms of it should remove a doubt
entertained, whether any *viva voce* argument, or motion, be
allowable; although it is equally clear, from Section XIX, Re-
gulation III, 1793, already quoted, and Section V, Regulation
IV, 1793, here first noticed, that all regular pleadings in de-
pending causes, as well as generally all representations to the
court for orders, are required to be in writing.

It is next directed, that " every complaint, which may
" be presented to the court, shall state precisely the matter or
" complaint;" and that, if for land, it shall specify the estima-
ted amount of its annual produce, viz. the sum payable by the
under-tenants on account of the year in which the claim may
be preferred; or, as more accurately defined in Section VIII,
Regulation I, 1801; " the neat annual rent or other neat pro-
duce receivable by the proprietor, after deducting from the gross
rent, or other gross produce, the actual expence of collection,
and other usual charges of management;" or if the plaint be
for a house, or other real property, not being land, either
malgoozary (paying revenue to Government) or *takheraj*
(exempted from the public revenue;) or for any other de-
scription of property; or relating to marriage or cast; or for
damages on account of any injury; it is to state, " according
" to the nearest estimate, the exact sum of money; or the
" amount in which the plaintiff may be endamaged." It is
also to specify the name of the person complained against;

and

and the time when the cause of action arose. It may be written, in common with all other pleadings, in the Persian, Hindoostanee, or Bengal language, at the option of the parties, in the provinces of Bengal and Orissa; and in the Persian, or Hindoostanee language, in Bahar, Benares, and the ceded provinces. But every plaint is to be signed by the complainant, or his authorized vakeel; and is to be signed, numbered, and dated, in the order in which it may be received, by the judge; as well as registered in a book, to be kept for this purpose by a native officer of the court.

And in what language to be written.

To be signed, numbered, dated, and registered.

UPON a complaint being preferred, conformably with the preceding rules, to the proper zillah or city court, on account of any matter cognizable by it; and upon tender of the institution fee, with security for the pleader's fee if a vakeel be employed; or proof of inability, as more fully stated in the sequel; the court is to issue a summons on the defendant*, containing a short account of the demand, and requiring the defendant to accompany the officer deputed to serve the summons, or to deliver to him good and sufficient security to appear in person, or by vakeel, and answer to the complaint on a day appointed. The form of the security bond, to be executed by the sureties for the appearance of defendants, is prescribed in Section III, Regulation XI, 1797; (re-enacted for the ceded provinces by Section XXIX, Regulation III, 1803); and for the relief of defendants, in cases of undue or exaggerated demands, by Section II, Regulation III, 1802, (corresponding with Section VIII, Regulation XIV, 1803, for the

R. IV, 1797.
§ V.
R. III, 1803.
§ V.

Summons to be issued on defendants.

Security to be required from defendants.

R. XI, 1797.
§ III.
R. III, 1803.
§ XXIX.

R. III, 1802.
§ II.
R. XIV, 1803.
§ VIII.

* On defendants, provided they have a joint interest in the matter at issue in the cause; or are jointly answerable for the plaintiff's claim. But it has been ruled by the court of Sadar Dewansy adawlat, in more than one instance, that a suit against several defendants, who were not jointly bound to the plaintiff, nor had they joint interest in the cause, should not have been received and tried, as a collective suit, and may be dismissed, as irregularly instituted, leaving the plaintiff to prefer a separate claim against each person, not jointly concerned with others. The plaintiff, however, may be allowed to amend his plaint when erroneously preferred, in such cases, if it has not been proceeded upon, and it is the duty of the judge to reject, in the first instance, any amendment which may not be received in conformity with the regulations.

ceded provinces), the judge is authorized to fix the extent of the security to be required for the appearance of the defendant, in the first instance; with directions, whatever may be the claim of the plaintiff, to demand from the defendant such security only as may appear necessary to secure his appearance during the trial of the suit. But if, at any time in the course of the trial, the security so taken shall appear to the judge insufficient, he is authorized, and required, to take such further security as he may think necessary, to secure the defendant's appearance until a final judgment be passed on the case.

R. IV, 1793.
§ V.

R. III, 1803.
§ V.

Defendants receiving the summons, and not giving the security required, how to be proceeded against.

R. IV, 1793.
§ XI.

R. III, 1803.
§ XIII.

Process against defendants upon whom the summons cannot be served.

THE summons on the defendant is to be served upon him by the nazir of the court, or his inferior officer, who, in the event of the defendant's being found, and his not giving the required security, is to take his person into custody, and bring him before the court; which is empowered to commit him to close custody until he shall have given the requisite security, or performed the decree which may be passed upon the complaint against him. If a defendant, against whom a summons may issue, shall abscond, or is not after diligent search to be found, or shut himself up in any house or building, or retire to any place, so that the process cannot be served upon him, the judge, on receiving the nazir's return to this effect, is to issue a proclamation, in the country languages, containing a copy of the summons, and a notice, that if the party shall not appear on a day to be fixed, (not less than fifteen days from the time of publication) the court will proceed to try and determine the cause without the appearance or answer of the defendant. This proclamation is to be fixed up in some conspicuous part of the court-room, as well as on the outer door of the defendant's usual dwelling house, or in some public situation at his usual place of residence; and if the defendant, shall not appear at the time limited in the notice, or if a defendant who may have been served with a summons shall not appear; or if, having appeared, he shall refuse to make

In what cases the suit may be tried *ex parte*.

“ answer, or make other default, or admit the truth of the
 “ plaintiff’s bill of complaint; the court, on examining the al-
 “ legations of the plaintiff only, and the depositions of his
 “ witnesses, is to decree and give judgment, in the same man-
 “ ner as if the defendant had appeared, answered, and entered
 “ into proof.”

THE foregoing process is not applicable however to any
 “ case, in which the defendant shall be a Hindu or Mahome-
 “ dan woman, of a rank or quality which, according to the
 “ customs and usages of the country, would render it impro-
 “ per to compel her to appear in an open court of justice.”
 In all such cases the judges are not to issue any compulsory
 process; but a summons is to be directed to the nazir of the
 court; containing a short account of the demand, with a no-
 tice that if the defendant shall not appear in person, or by
 vakeel, at the time specified, or having so appeared shall not
 answer the complaint, or make other default, the court will
 proceed to try and determine the cause, as if she had appear-
 ed and answered; and commanding him to deliver a copy of
 it to the dewan or some principal servant of the defendant.
 The nazir is to return the summons, on the day appointed for
 the appearance of the defendant, with an endorsement speci-
 fying in what manner he has executed it, or the reason why
 it has not been executed. If the dewan, or other principal
 servant of the defendant, shall abscond, or otherwise act so
 that the summons cannot be served upon him, or shall not after
 diligent search be found, the judge, upon proof on oath of the
 fact, is to proceed against the defendant by proclamation, in
 the same manner, and under the same penalty for non-appear-
 ance, or default, as directed against other defendants, upon
 whom the summons cannot be served. Another description
 of privileged defendants, upon whom a notice is to be served,
 instead of a summons, under Section X, Regulation VIII 1795,
 for the province of Benares, has been already mentioned. It

Summons and
 other process
 how to be issued
 when the defen-
 dant is a woman
 of rank, who
 cannot appear in
 open court.

R. IV, 1793.
 § XIII.
 R. III, 1803.
 § XV.

Remark on o-
 ther descrip-
 tions of privi-
 leged defen-
 dants.
 R. XXIX.
 1793, § XX,
 &c.

may

R. XXXI,
1793, § X.
R. IV, 1798,
§ III, &c.
R. XXXVIII,
1803, § X.

may further be remarked, in this place, that special rules have been enacted for the service of process on persons employed in the manufacture of salt, or as officers in the salt department or in the provision of the Company's investment; as well as in other special cases, which will be noticed, for greater perspicuity, with the parts of the regulations which have immediate reference to such cases.

R. IV, 1793,
§ V.
R. III, 1803,
§ V.
On defendant's
appearance, a
day to be fixed
for his answer.
R. IV, 1793,
§ IV.
R. III, 1803,
§ IV.

If the defendant appear, either in person, or by vakeel, the court is to fix a day for the delivery of his answer to the complaint; and if it appear reasonable, may afterwards allow a further period for this purpose. That no doubt may be entertained, whether the cause of action, in suits decided by the zillah and city courts, be such as to render them appealable to the superior courts of appeal, the defendant, if he have any objections to the plaintiff's statement of the cause of action, is required to insert them in his answer; and the judge is thereupon to make such inquiries, as he may deem necessary, to ascertain whether the cause of action be such as to render the cause appealable or otherwise. If the defendant's answer offer no objections on this point, the plaintiff's statement of the cause of action is to be held correct, so far as to determine eventually whether the suit be, or be not, appealable, according to the prescribed limitations.

Any objections
to plaintiff's
statement of the
cause of action
to be inserted in
the answer.
And judge to
make any ne-
cessary inquiry
thereupon.

R. IV, 1793,
§ V.
R. III, 1803,
§ V.

Reply, when to
be delivered;
and what to con-
tain.

WHEN the defendant shall have delivered his answer to the complaint, the plaintiff is to reply to it on the next court day. He is not to introduce in his reply any matter not contained in his complaint; but is either to acknowledge the answer of the defendant to be true, or simply and shortly deny the truth of such of the facts stated in it as he intends to dispute; or of all the facts therein stated, or the competency of the answer. The defendant, whose rejoinder is to be delivered on the same day with the reply, (or, as usually allowed, on the succeeding court day,) is in like manner restricted from intro-

Rejoinder.

ducing

ducing in it any matter not contained in his answer; and is required simply to deny the truth of the reply, or of the parts of it which he means to dispute; and to aver the truth or competency of his own answer. No further pleadings are admissible; unless from mistake, inadvertence, or other cause, the plaintiff shall have omitted to insert in his complaint any thing material to the suit; or the defendant shall have omitted to insert in his answer any thing material to his defence: in either of which cases, on the omission being represented to the court, the plaintiff is to be allowed to prefer a supplemental complaint, or the defendant to deliver a supplemental answer; and both parties may reply and rejoin to such supplementary pleadings, in the same manner as to the original plaint and answer. But no more than one supplementary complaint, or answer, is receivable; and whenever a defendant shall refuse, or neglect, to rejoin at the time appointed; the register of the court is to enter a rejoinder for him.

In what cases supplementary pleadings may be admitted.

Refutation.

The register to enter a rejoinder for defendant in cases of refusal to rejoin.

WHEN the rejoinder has been filed, the court, either immediately, or on a fixed day, (of which eight days notice to be given) is to examine the truth of the complaint, by the oaths of the parties if they mutually consent to that mode of examination, and of the witnesses who may be produced by them, if they have any. To procure the attendance of witnesses, within the jurisdiction of the court, a summons is to be issued, in the mode prescribed by Section VI, Regulation IV, 1793 (and Section VII, Regulation III, 1803, for the ceded provinces); or if the witness be a Hindoo or Mahomedan woman, of rank and quality, which, according to the customs of the country, would render it improper to compel her appearance in a court of justice, a commission of three creditable women, sworn to the faithful execution of their trust, is to examine the witness on written interrogatories to be delivered by the parties. The regulations above mentioned, with some additional provisions in Regulation L, 1803 (re-enacted for the ceded

R. IV, 1793
§ VI.
R. III, 1803,
§ VI and VII.

Commissioners to be sworn to the faithful execution of their trust.

Summons to be issued for the attendance of witnesses.

Or commission to be sworn to the faithful execution of their trust.

R. L. 1803, § II and V.

R. VII, 1803,
§ XXV.

Oath to be administered to witnesses; and parties consenting to be examined on oath.

Penalty for non-attendance, or other default, of witnesses duly summoned.

Provision for reimbursement of expenses incurred by the attendants.

Attendance of witnesses, or parties, resident without the court's jurisdiction, how to be procured.

Or evidence of such witnesses, residing at a distance of more than fifty fols, how to be obtained.

R. XLIX,
1803, § XXI.
Judges authorized to employ their registers, assistants, and principal native

ceded provinces in Section XXV, Regulation VIII, 1803) also provide for administering to witnesses, as well as to parties consenting to be examined on oath, such oaths as may be considered most binding on their consciences, according to their respective religious persuasions; and for admitting a solemn declaration, instead of an oath, when the witness may be of rank or cast, which according to the prejudices of the court would render it improper to compel him, or her, to take an oath. The same regulations authorize the apprehension, fine, and imprisonment, of witnesses duly summoned, who shall not attend; or attending, shall refuse to give evidence, or to subscribe their depositions; providing likewise for their reimbursement, by the party at whose requisition they may be summoned, for any reasonable expenses incurred by their attendance: without payment of which, or securing it to the satisfaction of the court, the party summoning a witness is not only liable to lose the benefit of his testimony; but to be confined, after a decision upon the cause, until he shall discharge the sum awarded to the witness. If the personal attendance of a party, or witness, (not being a woman of rank) resident without the jurisdiction of the court in which the cause is depending, be deemed indispensably necessary by the judge trying the cause, he is to address the judge of the jurisdiction in which such party or witness may reside, requesting him to order their attendance. But when personal attendance is not requisite, and the witness shall reside out of the jurisdiction of the court in which the suit may be instituted, at a greater distance from it than fifty fols, (a hundred miles,) the judge is authorized to apply by letter, for the examination of the witness by the judge of the jurisdiction in which he may reside, upon written interrogatories to be delivered by the parties for that purpose. By Section XXI, Regulation XLIX, 1803, the judges of the zillah and city courts are authorized to employ their registers and assistants, or any of their principal native officers, in taking down the depositions of witnesses, whom they may

not

not have time to examine *viva voce* themselves. But the deposition of every witness, who may appear in court, is to be taken in open court, in the presence of the parties, or their authorized pleaders; and is to be reduced into writing in the Persian, Hindoostanee, or Bengal language, as the witness may desire. The deposition is to be subscribed by the witness with his name, or mark; and, if not taken before the judge in person, is to be also attested by the parties, or their pleaders, in testimony of their having been present. It is further provided, that if any dispute or question shall arise in the course of taking the evidence of a witness so examined, the judge shall immediately, or as soon as practicable, hear and inquire into the same in the presence of the witness, and of the parties or their pleaders; and shall pass such order thereupon as may appear to him proper. Every exhibit or written evidence is also to be produced in open court, at the trial; to be marked with some letter or number to identify it; and, if disputed, is to be duly proved by examination of witnesses. If the judge shall think it just and proper to reject any exhibit, or written evidence, offered in a depending cause, he is to endorse upon it the word "rejected;" with the names of the parties, the date of rejection, and his reasons for not admitting it; to subscribe his name to the endorsement; and to return the document to the person who produced it.

officers, in taking the depositions of witnesses.

Rule to be observed in all such cases, and whenever a witness may appear in court

General rule concerning exhibits, or written evidence, produced in court.

WHEN the parties have been heard by their pleadings, the witnesses produced on both sides examined, and the exhibits received have been duly considered, the judge is to give judgment, in conformity with the laws and regulations, according to justice and right; and is to order costs to be paid to the party in whose favor the decree may be made; or in such manner as it may appear equitable to award by the decree, on due consideration of all the circumstances of the

R. IV, 1793, § VII and XXVI.
R. VII, 1793, § IX.
R. III, 1803, § IX, and XXVII.
R. X, 1803, § VIII.

Judgment to be given when the pleadings and evidence have been received and considered.

By a circular order
of the 27th April 1796,
the following is
enacted:

case.* The judges are enjoined to make it an invariable rule to insert in their decrees all sums paid, or payable, by the parties, on account of costs and expenses of the suit; and the parties are declared not liable to the payment of any other costs or expenses, excepting such as may be inserted in the decree. The judges are further directed to insert in their decrees the names of the witnesses whose depositions may have been taken; the title of every exhibit read in the cause; and the amount of the annual produce of the land, or the sum of money, or value of other property adjudged. The decree is to be sealed with the seal of the court, signed by the judge, and dated on the day when it may be passed. The judge or the register, either at the time of making the decree, or within ten days afterwards, is to deliver, or tender, in open court, to each party, or their vakeels, an authenticated copy of the decree; with an endorsement of the date of delivery, or tender; which is also to be inserted in the records of the court; with the cause of non-delivery, if the parties, or their vakeels, shall not attend to receive the copies of the decrees prepared for them, when tendered as directed. These provisions have reference to an appeal from the decision of the zillah or city court to the provincial court of appeal. But if the cause be not appealable under the prescribed limitations, or if no appeal be preferred, the judge

Copy of the
decrees to be
delivered to the
parties, or their
vakeels.

Every copy of
the decrees to be
delivered to the
parties, or their
vakeels.

By a circular order
of the 27th April 1796,
the following is
enacted:

The general rule, deducible from the regulations cited, is in substance, that the costs shall follow the judgment on the claim; viz. if the whole of the plaintiff's claim be established, he shall recover all his costs from the defendant; if his claim be altogether dismissed, he shall pay the costs of the defendant. If the plaintiff's claim be partly proved, and partly disallowed from want of proof, the defendant shall pay his own costs and those of the plaintiff on the part proved; and the plaintiff shall pay his own costs and those of the defendant on the part disallowed. This also appears to be the most equitable principle for general observance, as well as the most likely to prevent litigiousness. But particular cases sometimes occur, in which it would be unjust to make either party pay the other's charges; and in such cases it cannot be meant by the regulations to preclude a judgment, that each party shall bear his own costs.

4 By a circular order from the sudder dewanny adawlut, under date the 27th April 1796, any objection shall have been made by the defendant to the plaintiff's statement of the cause of action, the determination passed thereupon, declaring the ascertained produce, amount, value, of the property in litigation, is also to be stated in the decree; for the purpose of deciding whether the cause be appealable or otherwise.

by whom the decree has been passed, is to proceed to the execution of it, by causing possession to be delivered, if the decree be for a zemindary, talook, or other landed property; or if it be for personal property, or a sum of money, by causing the specific thing to be delivered; or the value of it, or the sum of money decreed, to be levied by the public sale of the whole, or a sufficient portion, of any property, real or personal, belonging to the party against whom the judgment may have been given; or by the attachment of his person; or if necessary, both by a sale of property, and personal attachment.*

If the defendant be committed to close custody; at the instance of the plaintiff, either whilst the suit is depending, or after the decree shall have been passed, the judge, at the time of committing the defendant, is to make an order on the plaintiff for the payment of such monthly allowance, as he may think reasonable, for the subsistence of the defendant, not exceeding four annas, nor being less than one anna per

R. IV, 1793,
§ VIII.
R. III, 1803,
§ X.
Allowance to be
made by plain-
tiffs for subsis-
tence of defend-
ants, when con-
fined at their
instance.

* The application of parties for enforcement of decrees is not requisite, as the original plaint is understood to imply the plaintiff's desire of recovery by judicial process, unless intimation be given by him to the contrary. This point was discussed between the Calcutta provincial court, and the judge of zillah Jessore, in the year 1797; and the court of sudder dewanny adawlut, after considering the correspondence which took place on the subject, passed the following resolution on the 8th November of that year. "The court, on consideration of the foregoing correspondence between the Calcutta provincial court and the judge of zillah Jessore, concur in the construction given by the former to the existing regulations, respecting the enforcement of decrees, viz. that according to Section VII, of Regulation IV, 1793, the zillah judge, after passing a final judgment, should proceed to carry the same into execution, in the manner directed in the above section, without waiting an application for this purpose from the plaintiff; whose original plaint for the recovery of the property decreed is in such cases still before the court; and, with his subsequent pleadings, must be understood to imply his desire of recovery by judicial process, unless any intimation be given by him to the contrary; in which case the court, receiving the same, would of course suspend the execution of process in his behalf." It has also been observed by the sudder dewanny adawlut (on the 9th August 1797) that a petition to enforce a decree, presented after an interval of several years from the time of its being passed, does not subject the petitioner to the intimation fee, as on a new suit; "the process in such case being not to try the merits of the cause, but to determine on the enforcement of the decree, after hearing the objections of the party against whom it is desired to be enforced." It should however, that, if the petition for enforcement include a claim upon any person who was not a party in the cause decreed, "such claim must be prosecuted as a new suit, liable of course to the established intimation fee."

Judge, how to proceed, in case of neglect or refusal.

This rule not applicable to defendants confined for disobedience.

But the spirit of it includes plaintiffs confined at the instance of defendants.

R. XLV, 1799.
U. XX, 1795.
A. V, and XII, 1796.
R. VII, 1799.
R. I, 1801.
R. XXVI, 1803.
Sales of land in execution of judicial process now to be made.

diem. The payment is to be made monthly, in advance*, to the nazir of the court; and the first payment immediately upon the confinement of the defendant. If the plaintiff shall neglect or refuse to pay the prescribed allowance, for one month after it may become due; the judge, upon the nazir's report to this effect, is to notify, by a written publication, to be fixed up in some conspicuous part of the court room, that if the plaintiff shall not, within a month after the date of the notice, pay the sum in arrear, with the allowance for one month in advance, the court will release the defendant: and he is to be discharged accordingly, if the plaintiff shall not make the payments required by such notice. This rule is not applicable to defendants who may be committed to custody for disobedience to an order of the court; the allowance to them being paid by government. But the spirit of it must be considered to include plaintiffs, whose claims may be dismissed, with costs; and who may be confined for the recovery of the latter, at the instance of the defendants intitled thereto.†

WHEN portions of estates are ordered to be sold in satisfaction of decrees of the courts of judicature, it is necessary, for the security of the public revenue, that a distribution of the assessment upon the entire estate be adjusted for the portion brought to sale; agreeably to the principles declared in Section X, Regulation I, 1793. The board of revenue, and the collectors, being in possession of the accounts required for the adjustment of the assessment in such cases; and moreover, as superintending the details of the attachment and sale of land, would occupy much of the time of the courts, and often

* This is the evident intention of the rules referred to; though, from a verbal inaccuracy, it has been doubted whether the second monthly payment be demandable at the expiration of the first, or of the second, month.

† In cases before the sudder dewanny adawlat on the 4th January 1798, and 28th February 1799, that court also considered Section VIII, Regulation IV, 1793, applicable to plaintiffs admitted to sue as paupers; when the defendants sued by them may be confined at their instance; the regulations not containing any exception with respect to paupers, on this point.

occasion delay in the enforcement of decrees ; it is provided, by the Regulations noted in the margin, that all sales of land, in execution of judicial process, shall be made by the board of revenue at the presidency ; or under their orders, by the collector of the zillah in which the lands are situated. For this purpose, it is directed that whenever there may be occasion to have recourse to a sale of lands, in satisfaction of a decree, the court by which the decree is to be enforced, shall transmit a copy and translation of it, without any other part of the proceedings, to the board of revenue ; who are to proceed with all practicable dispatch to dispose of such portion of the lands of the party against whom the decree is given, as may be sufficient to make good the amount of it. The court by which the decree is passed, or to which the enforcement of it is committed, may however, at any time before the actual sale, countermand or postpone it, upon sufficient cause, by a precept to the collector by whom the lands may have been ordered to be sold ; or by an address to the board of revenue, if the sale shall have been directed to take place at the presidency.

A copy and translation of the decree to be transmitted to the board of revenue ; to be enforced by them, or, under their orders, by the collector of the district, in which the lands are situated.

By whom the sale may be countermanded, or postponed, in such cases.

THE judges of the zillah and city courts are further required to transmit to the collectors, and board of revenue, copies of all decrees which may be passed by them, or which may be sent to them for enforcement, affecting the proprietary right to, or possession of, any lands paying revenue to government, or held exempt from the payment of revenue ; for the purpose of making the requisite entries and alterations in the periodical public registers of land. And in all suits wherein government may be one of the parties, the court passing a judgment, whether for or against government, is directed, by a late regulation, to transmit a copy and translation of the decree, as soon as the same can be prepared, to the secretary in the judicial department ; for the information of the Governor General in Council.

R. IV, 1793,
§ IX.
R. VIII, 1798,
§ IV.
R. LVIII, 1795,
§ III, and IV.
R. III, 1803,
§ XI.
R. XXXI,
1803, § XL.
R. XXXVI,
1803, § XLIII.
Copies of all
decrees affecting
lands, to be
sent to board
of revenue and
collectors.
R. II, 1805,
§ IX.

And in public
suits to Governor
General in
Council.

In addition to the foregoing general rules for the guidance of the zillah and city courts, in receiving, trying, and deciding the suits cognizable by them, and in carrying into execution the decisions passed by them, many subsidiary rules have been prescribed; of which the most important is that for preserving to the natives their own laws and usages, in certain cases; as already quoted from the judicial plan of 1772, and continued in the existing regulations, in the following terms: "In suits
 " regarding succession, inheritance, marriage, and cast, and all
 " religious usages and institutions, the Mahomedan laws with
 " respect to Mahomedans, and the Hindoo laws with regard
 " to Hindoos, are to be considered the general rules by which
 " the judges are to form their decisions." In Section III, Regulation, VIII, 1795, for the province of Benares, it is added that "in cases in which the plaintiff shall be of a different
 " religious persuasion from the defendant, the decision is to be
 " regulated by the law of the religion of the latter; excepting
 " where Europeans, or other persons not being either Maho-
 " medans or Hindoos, shall be defendants; in which cases the
 " law of the plaintiff is to be made the rule of decision in all
 " plaints and actions of a civil nature." The Mahomedan and Hindoo law officers, attached to the several civil courts, are required to expound the law of their respective persuasions; and the judges are directed to be guided by their exposition, in all cases wherein they may have no reason to doubt the accuracy of it; but if, in any case, they entertain such doubt, either from objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cause, if the court trying the suit consider the exposition given by its immediate law officer insufficient; it is declared at liberty to obtain a further exposition from the law officers of the superior courts by a reference of the case to them, through the judges of those courts. But no point of law is to be referred to individuals not acting in a public capacity; and to whom consequently

Rule for preserving to the natives their own laws and usages in suits regarding inheritance, marriage, and cast, and all religious institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered the general rules by which the judges are to form their decisions.
 R. IV, 1793.
 § XV.
 R. VIII, 1795.
 § III.
 R. II, 1798.
 § IV.
 R. III, 1802.
 § XVI.

By whom the Mahomedan and Hindoo laws are to be expounded.

consequently no responsibility attaches; although law opinions, quoting or referring to authorities, may be received from parties, in support of their claims; and, if it be deemed proper by the courts receiving them, referred to their law officers or to those of the superior courts. Upon the wise, just, and humane principle, which dictated these provisions, it will be sufficient to observe, that the translations of books of law, Hindoo and Mahomedan, made under the encouragement of the British government, have materially contributed to give effect to it, by enabling the judges of the civil courts to inform themselves upon general points of Mahomedan and Hindoo law, and to investigate the expositions of the native law officers attached to their respective courts. This salutary examination and control, it may be expected, will become still more efficient, under the means now afforded by the College of Fort William, to study the Sanscrit and Arabic languages, and to obtain a more perfect knowledge of the laws from original authorities*.

Translation of books of law have contributed to give effect to these provisions.

And further means of controlling the law officers may be expected from the studies of the College of Fort William.

A FURTHER provision, that "the zillah and city courts are not to pass a decree in any suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there are more claimants than one, who, by the Hindoo or Mahomedan law (respectively being had to the religion of the claimants) would be entitled to a portion of the property; excepting the property be, by the decree, adjudged to all the claimants, in the proportions to which they may be respectively intitled;" is rather a particular application of the preceding general rule, than a new rule; but, with a view to give it the fullest effect, the term "claimants" is construed to include all persons legally intitled to claim a share of the property in dispute, as well as the actual claimants in the cause before the court; and previ-

R. III, 1793, § XIII.

R. II, 1803, § XIX.

Application of preceding rules directed, in suits concerning the succession or right of inheritance, or landed property.

1799

R. XV

V, 1795, XI, 1803, suits intitled to the estate, by partition.

* Foreign laws and customs, not being Hindoo or Mahomedan, are ascertainable, as in England; by evidence; and the advocate general recommended this mode of ascertaining them in a case referred for his opinion, by the sudder dewanny adawlut, in February 1799.

Proclamation
usual in such
cases.

Spirit of the
rule, for obser-
ving Mahome-
dan and Hindoo
laws, declared
applicable to
cases of slavery.

Remark on dif-
ference between
this rule, and
the act of Par-
liament, which
defines the ju-
risdiction of the
supreme court,
over the native
inhabitants of
Calcutta.
21. Geo. III,
cap. 70. § 17.

All cases of an
intricate or spe-
cial nature, not
lawfully pro-
vided for by
regulations,
the in-
terpretation of
the rule.

1793.

11, 1803.
VII.

In what man-
ner opinion of law
officers to be
taken.

ously to giving judgment in the suits described, it is usual to issue a proclamation, requiring all persons, intitled to any portion of the litigated property, to notify their right and claim thereto, within a limited period; that the same may be included in the court's decree; or their right, if disputed, reserved for investigation by a separate suit. It may be useful to add, that on a reference to the sudder dewanny adawlut in the year 1798, the court were of opinion that the spirit of the rule, for observing the Mahomedan and Hindoo laws, was applicable to cases of slavery; though not included in the letter of it; and this construction was confirmed by the Governor General in Council, under date the 12th April 1798*. It is observable, that the rule in question is not so extensive as the act of parliament, which defines the jurisdiction of the supreme court over the native inhabitants of Calcutta, with respect to "all matters of contract and dealing between party and party;" and considering the very comprehensive nature of this general head of law, it might be productive of much practical inconvenience, as well as delay of justice, if a reference to the law officers were required in every instance of contract or dealing, however inconsiderable. But in all cases of an intricate or special nature, not expressly provided for by the Regulations, it is customary, and obviously according to the spirit and intention of the general rule above cited, that the matter in contest be determined by the law of the parties.

WHEN a reference to the law officers is deemed necessary, a statement of the facts, on which the question of law may arise, is to be made out in writing, signed by the judge of the court, and delivered to the law officer for his opinion; which he is to

* For the Mahomedan and Hindoo laws of slavery, consult the translations of the *Hedaya* and *Hindoo Digest*. Also Sir W. Jones' versions of *Mennu*, and *Al Sirafiyah*. Mr. Hamilton's just observations on the fifth book of the *Hedaya* are nearly as applicable to Hindoo, as to Mosulman, bondage. Yet the yoke is degrading to human nature, and might be gradually loosened.

return on the same paper, or on a paper annexed to it, attested with his signature. The judges of the zillah and city courts are strictly enjoined not to order, or allow, a report of any matters of fact, relating to a cause depending before them, with a view to pass a decree thereupon, to be made to them by any officer of the court, or other person, excepting cases in which special authority for that purpose may be given by the regulations. But in cases of disputed property, regarding lands, houses, or boundaries, in which the court may deem a local investigation proper, it is authorized to appoint an aumeen (commissioner), who is to be sworn to make a faithful report of the matters he may be directed to investigate, and whose written report, subscribed with his name, is to be received as evidence in the cause, with regard to such matters only. The allowance to the aumeen, as fixed by the court, and any necessary expence attending the execution of his commission, are to be added to the costs of suit, and paid by the person against whom the decree may be passed. It is however a general rule that the plaintiff and the spirit of it is equally applicable to the defendant) shall, in the first instance, "pay the charges of all "process attended with expence which may be issued in his "behalf previous to the decision of the suit".

In all suits for money, or personal property, the amount or value of which shall not exceed two hundred sicca rupees, the courts are empowered, with the consent of the parties, to refer the suit to an arbitrator, who may be either chosen by the parties or their vakeels, or appointed, with their consent, by the court. And in suits concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action may exceed two hundred rupees, the court are to recommend to the parties to submit the decision of the matters in dispute to one or more arbitrators, of their own election. The judges are enjoined to afford every encouragement in their power to persons

No report of facts to be made by any officer of the court, or other person, except in cases authorized.

R. IV, 1793, § XVII.
R. III, 1803, § XVIII.

A local investigation may be ordered in certain cases.

R. IV, 1793, § XVIII.
R. III, 1803, § XIX.
General rule for payment of charges in the first instance.

R. XVI, 1799, extended to suits narrated by R. XV 1795.
R. XV, 1795.
R. XXI, 1803.
What suits may be referred to an arbitrator, chosen by parties, or appointed by court.

And in what suits courts to recommend election of one or more arbitrators, by the parties.

What persons eligible as arbitrators.

Mode of proceeding to be observed in cases of arbitration; and provisions for delivery and execution of award.

Award not to be set aside, except for corruption, or partiality.

R. VIII, 1794, § XIII, extended to Benares by R. I. IV, 1795, R. VII, 1799, § XV, R. V, 1800, § XIV, R. XXVIII, 1803, § XXXII.

In what cases the judges are empowered, and required, to refer accounts for adjustment to the collectors.

In what manner such references are to be made.

persons of character and credit, to become arbitrators; but are not to employ any coercive means for that purpose: nor to permit any of their public officers, or private servants, to be arbitrators in a cause. Regulation XVI, 1793, (re-enacted for the ceded provinces by Regulation XXI, 1803) prescribes the mode of proceeding to be observed when a suit is submitted to arbitration; and provides that the final award be delivered to the court, under the seal and signature of the person, or persons, by whom it may be made, together with all the proceedings, depositions and exhibits in the cause; that the court is to pass a decree conformably with the award; to be carried into execution in the same manner as other decrees of court; and that the award is not to be set aside, except it be fully proved to the satisfaction of the court, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality.

In all causes concerning demands, arrears, or exactions, of rent, and other matters heretofore cognizable in the revenue courts; between the landholders or farmers of land, and their under tenants; or between any other persons concerned in the collection or payment of the land-rents; and in which neither the collectors, or their public officers or private servants, or government, may be parties; the courts are further empowered to refer to the collector of the district, for adjustment and report, any accounts which it may be necessary to adjust for the decision of the suit; and the judges are required to make such reference in every cause, of the above description, which neither themselves or their registers may be able, from other avocations, to try and determine without delay; and which may not be cognizable by the native commissioners acting under them. A precept to the collector is to be issued in such cases, under the signature of the judge and seal of the court, specifying the accounts and papers referred; and the time by which the report is to be made. The judge may, at the same time, com-

mand the parties or their vakeels (being any persons duly empowered to act for them) and their witnesses, to attend the collector; and empower the latter to examine the witnesses, as well as the parties if they agree to be so examined, upon oath. The collector is to submit his report by the time limited, or assign his reasons for not having been able to complete it, and the judge, upon the receipt of the collector's report, may either confirm, set aside, or alter his adjustment of the accounts, or pass such decision respecting them as shall appear to him proper. The declared object of this provision is "to expedite the administration of justice, by relieving the zillah and city courts from the trouble of arranging and comparing long and intricate accounts: the adjustment of which is frequently necessary for the decision of suits between individuals respecting land rents;" and it is much to be wished that the great importance of this object, to the parties concerned, may induce more frequent references to the collectors in the cases stated, than have hitherto taken place. It may also be hoped that the very useful aid, which the collectors have it in their power to afford, towards the due administration of justice, when such cases are referred to them, will induce their ready and zealous attention to all references which may be made to them, in pursuance of this part of the general regulations for their guidance.

Report to be made by the collector.

And decision to be passed thereupon by the judge.

Object and importance of this provision

THE causes depending in the zillah and city courts are to be brought on for trial according to the order in which they may be filed; excepting cases in which it may be otherwise directed by any regulation; or in which the judge may think it proper, for special reasons, which he is to state at large upon the record of the trial, to bring on the cause before its turn. "If the plaintiff at any time neglect to proceed in his suit for six weeks, it is to be dismissed, unless he can shew good and sufficient cause for not having proceeded in it; and the court is to award to the defendant the whole or any part of the costs incurred by him in the suit, as it may seem equitable."

R. IV, 1753. § XIX.
R. III, 1803. § XX.
Order, in which causes are to be brought on for trial.

R. IV, 1793. § X.
R. III, 1803. § XII.
Rule for non-suits, in cases of neglect for six weeks.

The

The judge is, at the same time, directed to record upon the proceedings, his reasons at large for dismissing the suit of the plaintiff, or allowing him to prosecute it after he shall have neglected to proceed in it for six weeks; and the zillah and city courts were informed by a circular notice from the sudder dewanny adawlut, dated the 22d August 1795, that "the plaintiffs in causes dismissed under this rule have the option of re-instituting them under the regulations;" viz. by instituting a new suit in conformity with the general rules in force.

Explained by sudder dewanny adawlut, as not precluding a new suit

Further explanation of the neglect to which the rule applies; and the mode of proceeding required, in the application of it.

Reason for stating this explanation.

The court, on the 5th October 1797, upon a reference from the judge of zillah Backergunge, further declared the meaning and intent of the above provision to be "that if a plaintiff shall neglect, for the term of six weeks, to perform any act required from him in the regular prosecution of his suit, he is to be nonsuited; but *before* the judgment of nonsuit is passed against him, he is to be called upon to shew cause for not having proceeded in it, and such cause is to be admitted to bar the nonsuit, if good and sufficient; but not otherwise."

This explanation of a penal rule, which has been sometimes misapprehended, is here introduced, with a view to guard against its erroneous application; to the serious injury of the parties affected by it, who, till lately, were liable in consequence to all the expences of a second suit; and are still exposed to expence and loss of time in obtaining a reversal of the nonsuit, by an appeal to the provincial court, under the provisions contained in Section XI, Regulation II, 1805; and the former rules therein referred to.

R. IV, 1793, § XX.
R. VIII, 1795, § IV and IX.
R. III, 1803, § XXI.
R. XLIX, § XX.

In what languages process of civil courts to be written or printed, and how to be issued.

ALL orders and process of the civil courts, which may be directed to be served, or executed, on any person, are to be written, or printed, in the Persian and Bengal languages in the provinces of Bengal and Orissa, and in the Persian and Hindoostanee languages in Bahar, Benares, and the ceded provinces; to be sealed with the seal of the court; and to be signed by the judge or register. When process is issued against any person

person not present at the place where the court may sit, and a peon, or peons *, may be required for serving, or executing it, each peon is to be paid by the party, in whose behalf it may be issued, four annas (in Benares two annas) per day, except in districts where custom may have fixed the subsistence money of peons at a lower rate; but no greater number than two are to be deputed to serve or execute any process; and one only, unless in particular cases two may appear necessary.

Allowance to peons, not on the public establishment, who may be required to execute it.

If any zemindar, talookdar or other landholders, or a farmer of land holding his farm immediately from government, or any other person, shall resist, or cause to be resisted, any process, rule, order, or decree, of a zillah or city court; upon proof of such resistance, after the offender shall have been duly summoned to answer to the charge, and on non appearance proceeded against by proclamation, the court is empowered to decree the forfeiture of his zemindary, talook, or, other estate, in which the resistance may have been made; or, if made out of the limits of the offender's estate, the forfeiture of any landed property he may possess within the jurisdiction of the court whose process shall have been resisted: or, if the offender be a sudder† farmer, that his lease be cancelled from the expiration of the current year: or if he be neither a landholder, or sudder farmer, or although such, if the judge of the court, whose process may have been resisted, shall be of opinion that a fine to government is a more proper and adequate punishment for the offence, than a forfeiture of the offender's estate or farm, he is authorized to adjudge the payment of such fine to government as may appear proper, upon a consideration of the offender's situation and circumstances, and the

R. IV, 1793, § XXII, to XXIV.
R. VIII, 1795, § V, to VIII.
R. IX, 1799.
R. III, 803, § XXIII, to XXVI.

Penalties for resistance to the process of a zillah or city court, by a landholder, principal farmer or other person.

* ~~Mud~~ properly called *Piddabs*; being literally footmen; and corresponding with the beadles, apparitors, and messengers, of the English courts; but here meaning such only as are employed without a fixed salary. Those upon the public establishments, who receive an allowance from Government, are denominated *Chuprassees*, or badge peons.

† Literally original, head, superior; opposed to *Mosuffil*, subdivided, subordinate, inferior. With respect to tenures, it is usually applied to such as are held *in capite*; or immediately from Government. *Sudder-Mosuffil* also denote the town and country; or more commonly the capital and its dependencies.

offence

R. VII, 1799,
§ XXIV.
Judgments
given in such
cases subject to
the general pro-
visions for ap-
peals.
And if for the
forfeiture of an
estate or farm
commutable to
a fine, by the
Governor Gene-
ral in Council.

offence of which he may be convicted; subject to the general provisions for appeals from the judgments of the zillah and city courts*. But in all cases wherein a final decree may be passed for the forfeiture of an estate, or farm, on account of resistance of process, a copy of the decree and of the proceedings held upon the case, is to be transmitted to the Governor General in Council; to whom is reserved an option of either ordering the decree to be executed, or of commuting the forfeiture for such fine as he may think adequate, and the decree of forfeiture is not to be carried into execution until notice be received of his confirmation of it.

R. XLIX, 1793.
R. XIV, 1795.
R. V, 1798,
§ VII.
R. XXXII,
1803.
R. II, 1805,
§ V, and XIII.
Summary pro-
cesses authorized
in cases of
forcible dis-
possession from
land, or other
property, for
immediate re-
covery of
possession.

RESERVING for the latter part of the present section the general regulations, which relate indiscriminately to the whole of the civil courts, of appellate as well as of original jurisdiction; and for the succeeding parts of this analysis the provisions made for summary judicial processes, in cases of arrears of rent; as well as in certain cases connected with the public revenue; it may be stated, in this place, that besides the powers vested in the zillah and city courts, for the trial and decision of regular suits, under the rules which have been specified, they are empowered by Regulation XLIX, 1793, (extended to Benares by Regulation XIV, 1795; and re-enacted for the ceded provinces by Regulation XXXII, 1803); for the purpose of preventing affrays respecting disputed boundaries, lands, crops, and other property; to take immediate cognizance of complaints of forcible dispossession from land or crops; (as well as from tanks, reservoirs, wells, or water courses in the province of Benares); and upon the previous possession (or rather the violent dispossession) of the complainant being proved to their satisfaction, to cause the land, crops, or other property of which he may have been forcibly dispossessed to be restored to him; or the value of

* The specification of one thousand, instead of five thousand, rupees, as the standard for appeals, in Sections XXIII, XXV, and XXVI, of Regulation III, 1803, is evidently an oversight. Vide R. IV, 1803, § XXIII, XXIV, XXVI. And R. VII, 1799, § XXIV, the

the crops, if damaged, destroyed, or not forthcoming, to be paid to him; with costs and damages; leaving the dispossessor to prefer his claim to the property in dispute by a regular suit in the dewanny adawlut; unless the dispossessor, or any persons accompanying him, in taking possession by force of the disputed property, shall kill, wound, or violently beat any person; in which case his right to the property in dispute is to be adjudged forfeited to the complainant; or if both parties assemble armed men; the one to take, the other to keep, possession of the disputed property; and a fray ensue, in which any person may be killed, wounded, or violently beaten; the disputed property is to be adjudged forfeited to government. It is declared however, by Section V, Regulation II, 1805, that the summary enquiry and restoration to possession, authorized by the regulations above mentioned, "shall be restricted to cases of forcible dispossession, which may be complained of, to the proper zillah or city court, within three months after such dispossession shall have taken place; unless it be clearly shewn and established that the complainant was prevented by good and sufficient cause from preferring his complaint, either in person or by his representative, within that period." It is further explained by Section XIII, that when the zillah and city judges, from the urgency of other business, may not be able to make the prescribed enquiry, in this and other instances wherein a summary process is allowed by the regulations, with the expedition requisite in such cases, they may refer the same to their registers; provided that the cause of action be such as would be referable to them in a regular suit, under the rules hereafter stated; and provided also, that the judge, who may have referred any such case, for summary enquiry by his register, may at any time recal the same, if he should see occasion for it; or, if he should subsequently find time to investigate the case himself. The judge is likewise empowered, in any particular case, which may appear to require it, to refer and

In what cases a judgment of forfeiture to be passed against the dispossessor.

On the disputed property to be adjudged for forfeited to Government.

Period limited for the application of the summary process allowed on complaints of forcible dispossession.

In what cases the summary enquiry authorized in this and other instances, may be referred to the zillah or city judge or his register.

And under what provisions.

amend any order passed by his register in such cases, on representation from the parties or otherwise.*

What regular suits may be referred to the registers of the zillah and city courts.

R. XIII, 1793.
§ VI.
R. VIII, 1794.
§ II, to XI
R. XXXVI,
1795, § II, to
IV.
R. LIV, 1795.
R. III, 1800.
R. XII, 1803.
§ VI, to X.
R. XLIX, 1803.
§ VI, and XXI.

R. XIII, 1793.
§ VI, rescinded
by R. VIII,
1794.

To prevent the time of the zillah and city judges from being occupied with the trial of petty suits, and consequently to enable them to determine causes of magnitude with greater expedition, they were empowered, by Section VI, Regulation XIII, 1793, to authorize the registers of their respective courts to try and decide suits for money, or any personal property, in which the amount or value contested should not exceed two hundred sicca rupees; and suits for malgoozary land, the annual produce of which should not be above two hundred sicca rupees; or for lakheraj land the proceeds of which should not be more than twenty sicca rupees per annum. But the same regulation directing that the decrees passed by the register were to be countersigned by the judge; to denote his approbation of them; and were not to be considered valid unless they were so countersigned; he was obliged to revise the proceedings of the register in every case; which often occupied as much of his time as would have been required for the trial of the suit in the first instance; and tended to defeat the object of the reference. With a view therefore to the more full attainment of that object, the section above mentioned was rescinded by Regulation VIII, 1794, and the decision of the register was declared final in all suits referred to him for money or personal property, the amount or value of which should not exceed twenty-five sicca rupees;

* The court of sudder dewanny adawlut, on the 21st June 1803, directed the provincial courts to inform the zillah and city judges, that complaints of forcible dispossession, referred under Regulations XLIX, 1793, and XXXII, 1803, are not to be filed as regular suits; and left for investigation according to their order and number; as such practice must defeat the end proposed of preventing affrays and bloodshed; that the prescribed summary enquiry is to be made immediately upon the receipt of such complaints; and upon proof of the complainant's forcible dispossession, the land and other property is to be restored to him, leaving the dispossessor to a regular suit; but if it appear that the party complaining has not been forcibly dispossessed, he is to be referred to a regular suit for the prosecution of his claim to the property in dispute.

under a discretionary power, reserved to the judges of the zillah and city courts, of revising the decisions passed by the registers in such cases, whenever the decrees of the latter might appear to them obviously unjust or erroneous. It was, at the same time, provided, that from all decisions passed by the register, in suits for real property, or for personal property exceeding twenty-five sicca rupees, an appeal should lie to the provincial court of the division, under the rules prescribed regarding appeals from decisions passed by the judge. But this provision being found to interfere considerably with the more important duties of the provincial courts of appeal, it was enacted by Regulation XXXVI, 1795, that the appeal from the register's decision, before allowed to the provincial court, should in future lie to the judge of the zillah or city court; under rules similar to those prescribed regarding appeals to the provincial courts from decisions passed by the judges; except that the petition of appeal is to be presented within thirty days,* either to the register or to the judge; the latter of whom is empowered to admit the appeal after the prescribed time, if the appellant can shew sufficient cause for not having filed his petition within the limited period; and the judge, on admitting an appeal, is to cause the petition, endorsed with the word "admitted" under his official seal and signature, to be sent to his register; who is thereupon to submit to the judge all the original proceedings and papers, with his decree, in the cause appealed. This rule and limitation, re-enacted for the ceded provinces by Regulation XII, 1803, are still in force for those provinces; where there has not yet been any considerable accumulation of causes depending before the judges of the civil courts. But in Bengal, Behar, Orissa, and Benares, it has been found necessary, for the more expe-

Alteration respecting appeals from the register's decisions made by R. XXXVI, 1795.

Rule and limitation in force for the ceded provinces, under R. XII, 1803; VI, to X.

New rule enacted for Bengal

* Originally from the date of the register's decision; but, under Section VIII, Regulation II, 1805, to be calculated from the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel.

Bahau, Orissa
and Benares, by
R. XLIX, 1803,
§ VI.

R. VIII, 1794, §
VI, rescinded by
R. XLIX, 1803,
§ VI.

An appeal
allowed in all
cases from the
register's decision,
to the zillah
or city judge.

R. III, 1800,
granting appellate
jurisdiction
to the registers,
in certain cases,
also rescinded
by R. XLIX,
1803, § VI.

ditional decision of suits in the zillah and city courts, to empower the judges by Section VI, Regulation XLIX, 1803, (whenever, on consideration of the number of causes under reference to their registers, and the number depending before themselves, it may appear to them conducive to the more speedy administration of justice) to refer to their registers, for trial and decision in the first instance, any causes depending in their respective courts, for money or other personal property, not exceeding in amount or value the sum of five hundred sicca rupees; or for malgoozary land, the annual produce of which may not exceed five hundred sicca rupees; or for lakheraj land the produce of which may not be more than fifty sicca rupees per annum; or any other description of real property, the computed value of which may not be above five hundred sicca rupees. Section VI, Regulation VIII, 1794, whereby the decision of the registers was made final in suits for personal property not exceeding twenty five sicca rupees, was at the same time rescinded; as suits within this amount may some times involve questions of a general and important nature, wherein an erroneous decision, not revocable by appeal, might be of serious ill consequence; and it is provided, that an appeal shall lie to the zillah and city judges from all decisions passed by their registers, if the appeal be preferred in conformity to Section III, Regulation XXXVI, 1795, and the general rules for appeals therein referred to. To enable the zillah and city judges to maintain the most efficient control over the native commissioners (hereafter mentioned) acting under them in the administration of justice, and to bring the official conduct of such commissioners, in all cases, before the judges; as well as to enable the parties in every suit, tried in the first instance by a native commissioner, to obtain, on appeal, a further trial and decision by the zillah or city judge; it was also deemed proper to discontinue the appellate jurisdiction, which, by Regulation III, 1800, had been vested in the registers of the zillah and city courts, for the trial of appeals

appeals from decisions of the native commissioners, when the property in dispute might not exceed twenty-five sicca rupees. The judges are further declared, by Regulation XLIX, 1803, to be at all times authorized to recal from their registers any suits referred to them, which may not have been decided; and which, for the more speedy administration of justice, or for any other reason, they may deem it proper to try and determine themselves in the first instance; or to refer for trial to a native commissioner, if the suit be referable to such under the regulations.

Judges may, at any time, recal suits referred to their registers, if not decided.

For hearing and deciding the causes referred to the registers of the zillah and city courts, the judges are to cause them to sit three days in every week; or oftener if their other avocations will permit. The register is to try the suits referred to him in open court; and is to be guided by the same rules as are prescribed for the trial of suits before the judge. The zillah and city judges may permit their registers to cause the depositions of witnesses, in suits referred to them, to be taken before their assistants, or any principal native officer, in the mode, and under the restrictions, specified in Section XXI, Regulation XLIX, 1803, whenever, from the number of causes depending before the register, it may appear to them indispensably necessary for the speedy determination of such causes. But this power is not to be exercised by any register without the permission of the judge, communicated to him by a written precept, which is at all times revocable when the judge may consider it no longer necessary to continue to his register the permission thereby granted. All process whatever, which it may be necessary to issue in suits referred for trial to the register, is to be issued under the seal of the court and signature of the register; to be executed by the officers of the court; and to be considered in every respect of the same force and validity as similar process issued in causes under trial before the judge. The judges of the zillah and city courts are also generally empowered,

Registers, how often to sit and by what rules to be guided in trying causes referred to them.

May cause depositions of witnesses to be taken, as authorized by R. XLIX, 1803, § XXI; with special permission of the judge.

Process in suits referred to the register how to be issued, and executed.

Validity of such process.

R. XLIX, 1803, § XX.

What other pro-
cesses may be
signed and issued
by the re-
gisters and their
assistants.

empowered to employ their registers and assistants in signing and issuing any process of court, which they may deem proper to be signed and issued by them: and to which the signature of the judge may not be specially required by any regulation.

Only for the
purpose of
native com-
missioners,
R. XI, 1793
R. XXXI, 1793
R. XXXVI,
1794, & V.
R. X'III, 1797.
R. XVI, 1803.
R. XLIX, 1803.

Three denomi-
nations of com-
missioners.

Aumeens.
Referees.

Salifan.
Arbitrators.

Muniffs.
Native justices.

Authority of the
Latter, under R.
XVI, & XLIX,
1803.

For the further relief of the zillah and city courts from the trial of petty suits; as well as to save the parties and witnesses in such suits from the inconvenience to which they would be subjected by the necessity of attendance at the court of the zillah or city, if this were the only local tribunal; and to promote, by additional subordinate judicatures, the general speedy administration of civil justice; native commissioners are appointed under the regulations specified, to hear and decide, in the first instance, suits for money, or other personal property, not exceeding in amount or value fifty sicca rupees. Such commissioners are of three denominations viz. aumeens, or referees, salifan, or arbitrators, and muniffs, or native justices. In the first capacity they are authorized to try and determine such suits only as may be referred to them by the judge of the city, or zillah, in which they are appointed. In the second capacity, they may hear and decide, without reference from the judge, any suits within the prescribed limitation, which may be voluntarily submitted to their award by arbitration bonds. In the third capacity stated, they have an original jurisdiction, which was formerly limited to the cognizance of the suits preferred to them against under-renters or tenants of land, in the estate or farm included within the extent of their commission; but for the general convenience of the inhabitants, residing at a distance from the zillah courts, the authority of native commissioners, vested with the powers of muniff, under Regulations XVI, and XLIX, 1803, has been extended "to receive, try, and determine all suits preferred to them against any native inhabitant of their respective jurisdictions, for money or other personal property not exceeding in amount or value the sum of fifty

fifty sicca rupees; provided the claim be really for money due, or property belonging, to the plaintiff; or for the value of such property; and be not for damages on account of alleged personal injuries; or for personal damages of whatever nature; no claim for which " (in consequence of experienced litigiousness in such cases) " is to be heard by any commissioner without an order of reference from the zillah dewanny adawlut." The commissioners appointed to act as munsiffs, under the regulations last mentioned, are also empowered to act as referees and arbitrators; and are to receive a fannud under the seal and signature of the judge of the zillah, in which they may be appointed, according to the form prescribed by the tenth clause of Section XXIX, Regulation XVI, 1803, and the tenth clause of Section XIV, Regulation XLIX, 1803. But a separate form of fannud is prescribed, by Section VI, Regulation XI, 1793, and Section IV, Regulation XVI, 1803, for commissioners appointed referees and arbitrators only; and they are restricted from exercising the powers of munsiff without special authority for that purpose. The whole of the native commissioners are to be nominated by the zillah and city judges, and approved by the sudder dewanny adawlut; without whose sanction no person is authorized to act as commissioner; nor can any person appointed be removed from his office, during the period of his commission, without sufficient cause proved to the satisfaction of that court. The number of commissioners, in the cities of Dacca, Moorshedabad, Patna, and Benares, is directed to be such that the judge may not have occasion to refer to them respectively more causes than they be able to determine with promptness; and in the several zillahs, where local circumstances will admit, is to be such, that the defendant may not be obliged to proceed a greater distance than five coss to answer any suit that may be preferred against him. It is further provided, that the general local jurisdiction of a munsiff be the same with that of the police jurisdiction (where police dargahs have been appointed) in which he may be empowered to officiate; but the sudder dewanny

Munsiffs are appointed to act as referees and arbitrators.

But referees and arbitrators are distinct from commissioners.

Native commissioners, by whom to be nominated, approved, and removed.

Their number, how to be regulated.

Further provision for local jurisdiction of munsiffs.

wanny adawlut, on the report of the zillah judge, may authorize a deviation from this rule, whenever it may appear advisable to appoint more than one muniff, within a police jurisdiction; or to include more than one police jurisdiction within that of a muniff. The appointment of commissioners with the powers of muniff has not, however, been deemed necessary within the cities, where courts are established; and no muniff is to be appointed within five coss of the station where a zillah court is held, unless the zillah judge shall, for any particular reason, consider it advisable to appoint a muniff within such distance; in which case he is to report the same for the determination of the sudder dewanny adawlut. In the selection of commissioners to act as muniffs, the judges are not restricted to any particular descriptions of persons; but are required to be particularly careful in selecting persons of good character and sufficient ability; as well as duly qualified by their education and past employments to discharge satisfactorily the trust reposed in them; and are to report to the sudder dewanny adawlut the information they may have obtained on these points, respecting any person proposed by them to be vested with the powers of muniff. The cauzees of the four cities are to be nominated referees and arbitrators, in virtue of their offices; and the judges are to nominate a sufficient number of other persons, of acknowledged character and ability, who may be willing to undertake the trust. The cauzees of the towns, or places, in which the several zillah courts are established, are also to be referees and arbitrators in virtue of their respective offices. But the other commissioners, to act as referees and arbitrators only, are to be selected by the zillah judges from the descriptions of persons specified in the third clause of Section V, Regulation XL, 1793; Section V, Regulation XXXVI, 1795; and the fifth clause of Section III, Regulation XVI, 1803; namely, proprietors of land, managing their own estates; farmers of land, holding their farms from Government; tehseeldars or native collectors of the public revenue; managers of joint undivided estates, or of

And restriction of their appointment within the cities, where courts are established; as well as within five coss of any zillah court.

Rule for the selection of persons to act as muniffs.

Who are to be referees and arbitrators in the four cities.

And in the several zillahs.

the estates of disqualified landholders; under renters, or officers of credit and responsibility intrusted with the collection of land-rents; creditable merchants, traders, and shopkeepers, or other persons of property and character, residing in towns, bazars, hauts, gunges or aurrungs, of sufficient extent to require a separate commissioner; ulumghadars and jagheerdars, or their managers; and mofussil cauzees. The judges are enjoined to nominate, for the offices of referee and arbitrator, such of the persons above specified as may be best qualified for the trust by their character and ability. But their commissions are to remain in force only whilst they hold the situations, in virtue of which they may have been selected; unless for special reasons the sudder dewanny adawlut should judge it proper to dispense with this rule: and that court may at all times order the recal of any commission granted, if the continuance of it appear unnecessary, or inexpedient.

Duration of commissions to referees and arbitrators.

And general power of recal, vested in sudder dewanny adawlut.

THE rules enacted for the guidance of the native commissioners, in trying and determining the suits cognizable by them, are detailed in the regulations referred to; and in cases for which no express provision may have been made, they are directed to observe, as nearly as may be practicable, the rules prescribed for the administration of civil justice in the courts of dewanny adawlut. Those appointed to act as muniffs must be sworn to the faithful execution of the trust reposed in them; and the whole of the commissioners are required to take the established form of oath, or to subscribe a declaration to the same effect. They are not to allow their officers, servants, or any other persons, to interfere in the trial of suits depending before them; and no cause is to be referred to, or tried by a commissioner, in which he, or any of his immediate servants, may be a party, or interested. They are empowered to summon parties and witnesses; (not being women whose rank and cast may be such as to render it improper to require their public appearance;) and upon non-attendance,

Rules for guidance of native commissioners, in trying and determining the suits cognizable by them.

Powers to summon parties and witnesses, and to attach personal property in certain cases.

attendance, or the refusal of defendants to give security for their appearance, if the suit be for more than ten rupees, or in causes within that amount if the defendant is about to abscond, are authorized to attach any personal property belonging to the defendant, or non-appearing witness, not exceeding the amount or value sued for. They are also empowered to impose a fine on any party, vakeel, or witness, for disrespectful behaviour to the commissioner, whilst in attendance upon him for the trial of a suit. But no commissioner is to enforce his own decision, in any case whatever: or to confine a party, vakeel, or witness, in any suit which may come before him. The zillah and city courts are to enforce all decisions passed by the commissioners, whether as referees, arbitrators, or muniffs; and for this purpose reports of all causes decided by them, with the original papers and documents in each cause, are to be transmitted by them monthly, on the fifth of each succeeding month. The commissioners are further required to deliver copies of their decrees to the plaintiff and defendant, or their vakeels, within three days after the time of decision. All suits decided by them, are appealable to the judge of the zillah or city in which they are appointed; provided the petition of appeal be presented within thirty days after the delivery, or tender in open court, of a copy of the decree, to the appellant or his vakeel. And a discretionary power is vested in the judge to admit the appeal, after that period, if the appellant can shew satisfactory cause for not having presented his petition within the time limited. The zillah and city judges are likewise authorized, for any reason that may appear to them sufficient, to bring up for trial before themselves, or their registers, any causes depending before the commissioners; and in all cases where a suit tried in the first instance by a native commissioner may appear not to have been sufficiently investigated, the judge may either refer such cause back to the commissioner by whom it was originally tried; or to any other

commissioner.

Also to impose a fine for disrespect to them, in the discharge of their duties.

But not to confine any person, or enforce their own decisions.

Monthly report of decisions to be made, for enforcement, to the zillah and city courts.

Copies of decrees to be delivered within three days.

And all suits decided by commissioners appealable to these courts.

R. II. 18-5, § VIII. Within thirty days after delivery, or tender, of a copy of the decree. Or, subsequently, at discretion of the judge.

Judge may also bring before himself, or register any cause depending before a commissioner.

And, in all cases not sufficiently investigated by a commissioner, may call for further evidence; or refer the cause to the same, or another com-

commissioner competent to try the same; or to his register with instructions to take and transmit the further evidence required; or, after taking further evidence to pass a new decision in the cause; or to try and determine the cause *de novo*; subject, in either of the two latter cases, to a further appeal to the judge, against such second decision; without any additional charge to the appellant for the established institution fee, if this fee shall have been already paid by him upon the original appeal.

missioner, or his register, for further investigation and decision, or for trial *de novo*.

Subject to appeal from the second decision without institution fee, if before paid.

IN consideration of the state of landed property in the district of Chittagong, distributed, for the most part, amongst numerous petty proprietors, between whom and their tenants so many disputes continually arose regarding the property or boundaries of their respective tenures, that the unremitting attention of the zillah judge, and his register, were found insufficient to bring them to an early decision; the judge of that district was authorized, by Regulation XVIII, 1797, to refer to any of the native commissioners, acting under him in the capacity of referee, suits for landed property, the annual produce of which, if malgoozary, should not exceed fifty sicca rupees; or if lakheraj, the produce of which should not exceed five sicca rupees per annum. The persons to whom such causes may be referred, are to receive a separate sunnud, as commissioners of land suits; and are to be guided by the general rules enacted for the guidance of native commissioners appointed aumeens or referees. It is further provided, that in all cases of inheritance of, or succession to, landed property; the Mahomedan law with respect to Mahomedans, and the Hindoo law with regard to Hindoos; shall regulate their decisions; and the commissioners, in all such cases, are to obtain an exposition of the law from the law officers of the zillah court. They are also to affix, in some conspicuous part of their cucherries (court-rooms) a notification of the suit preferred, with a requisition to all persons

Preamble to Regulation XVIII, 1797. Special regulation for the appointment of commissioners of land suits in zillah Chittagong, and for referring to them suits for landed property not producing more than fifty rupees per annum, if malgoozary, or five rupees, if lakheraj.

Rule to be observed by such commissioners, in all cases of inheritance or succession.

persons .

persons who have any claim to the property sued for, to prefer the same within a limited period; and their decisions are to include all claimants to the property in dispute, who, according to the law of the parties, have a just and legal title to share therein. But the commissioners of land suits are to report all decisions passed by them, to be enforced by the zillah court, as in suits for personal property, and an appeal is, in every case, equally open to the judge.

Decisions to be enforced by zillah court, and appeal to it open in all cases.

Court of fudder dewanny adawlut empowered to appoint a head native commissioner, with extended powers, in any zillah, or city, where it may be requisite.

In addition to the native commissioners above mentioned, the court of fudder dewanny adawlut are empowered by Section IX, Regulation XLIX, 1803, (and Section XXVI, Regulation XVI, 1803, for the ceded provinces,) to authorize the appointment of a head native commissioner, in any city or zillah, wherein such appointment may, on representation from the judge, or otherwise, appear to the court advisable, for the trial of any suits referred to him, by the zillah or city judge, for personal property not exceeding in amount or value one hundred sicca rupees; or for the property or possession of land, the annual produce of which, if malgoozary, may not be above one hundred sicca rupees; or more than ten sicca rupees, if lakheraj; or for any other description of real property, the computed value of which may not exceed one hundred sicca rupees. Such head commissioners are to be nominated, for the approbation of the fudder dewanny adawlut, by the zillah and city judges; who are required to be particularly careful in selecting persons of good character and known ability, as well as duly qualified by their education and past employments, to discharge satisfactorily the trust reposed in them. They are to receive fannuds of appointment under the seal and signature of the judge in whose jurisdiction they may be appointed to act, and are not to be removed from office without sufficient cause proved to the satisfaction of the fudder dewanny adawlut. The commissioners so appointed have the denomination of fudder aumeen, or head referee; are directed

By whom to be nominated, approved, and removed; and what persons to be selected for the office of head commissioner.

To be denominated "fudder aumeen," or

directed to hold their *cucheries* at the stations where the *zillah* or city courts are held; and are required to observe the general rules enacted for the guidance of other native commissioners acting in the capacity of referees; as well as the special rules prescribed for the commissioners of land-suits in *zillah* *Chuttagong*; except that all causes, referred to a head native commissioner, are to be pleaded by the parties in person, or by an authorized *vakeel* of the *zillah* or city court; and that the usual process for summoning and taking security from defendants, as well as for causing the attendance of any witnesses who may not attend before the head commissioner at the requisition of the parties, in common with all other process which it may be necessary to issue relative to any cause referred to, or decided by, a head native commissioner, is to be issued under the seal of the *zillah* or city court, to which the commissioner may be attached; and under the official signature of the judge, register, or assistant to the register of such court. It will be sufficient to add that the whole of the native commissioners described are liable to prosecution, in the *dewany adawlut*, for corruption in the discharge of their trusts; as well as for any oppressive and unwarranted act of authority. Upon proof of the charge to the satisfaction of the judge, he is directed to give judgment against the offender for three times the amount or value, of the money or property corruptly received; with all costs of suit; or in other cases of oppression, to award such damages and costs to the party injured, as may appear to him equitable. But no commissioner is liable to be prosecuted for want of form, or for error, in his proceeding or judgment. Nor is any process to be issued against a commissioner charged with corruption, or oppression, unless the judge shall be previ-

head referee, and to hold their *cucheries* at the station of the *zillah* or city court. By what rules to be guided.

By whom causes referred to them to be pleaded.

And in what manner all process, relative to such causes, to be issued.

All native commissioners liable to a civil prosecution for corruption, or any oppressive, and unwarranted act.

Judgment to be given on proof, in such cases.

But no commissioner to be prosecuted for want of form, or for error. Nor process to be issued, on charges of corruption or op-

provision, without ground to believe them well grounded.

ously satisfied, by sufficient evidence, that there is ground to believe the charge to be well founded *.

R XLIX, 1803.
Preamble and
II, III, IV
Provision for
the occasional
appointment of
assistant judges.

THE number of civil causes depending before the judges of some of the zillah and city courts having become so considerable, that great delay must have occurred in the investigation or decision of them, and of other causes which might be instituted previously to their determination, unless some provision were made to expedite the trial of them; and the accumulation of such causes having chiefly proceeded from

* There has not yet been sufficient experience, under the provisions made by Regulation XLIX, 1803, for the new arrangement of native commissioners empowered to act as magistrates; and for the appointment of head native commissioners, where required; to form a decisive judgment upon the utility of this subordinate judicial establishment. All powers entrusted to the natives, especially without fixed and liberal allowances, are liable to abuse, and it cannot be doubted that the native commissioners have, in some instances, perverted to purposes of self-interest, exaction, and oppression, the authority delegated to them for the more speedy and efficient administration of justice. But as far as an opinion can be formed, from the proportion of appeals against their decisions, to the total number of causes decided by them, in past years, their appointment appears to have been, in general, of considerable public advantage; and the following enumeration of suits actually decreed or dismissed by them, or adjusted before them by agreements (razeenamahs) of the parties, in the provinces of Bengal, Bahar, Orissi, and Benares, taken from official reports transmitted to the court of judicature, will shew the absolute impossibility of providing for the trial and decision of the numerous cases of litigation, which occur in these extensive and populous provinces, without the aid of some description of inferior judicatures under native superintendence.

In the year 1797,	Decreed or Dismissed	1,26,766,	Adjusted by parties	1,33,048,
1798,	ditto ditto	1,63,540,	ditto -	1,75,182,
1799,	ditto ditto	1,61,413,	ditto -	1,48,293,
1800,	ditto ditto	1,72,284,	ditto -	1,66,042,
1801,	ditto ditto	1,83,422,	ditto -	1,84,811,

The number of causes decided on trial, or dismissed on default, by the zillah and city judges, and their registers; or adjusted before them on razeenamahs; during the same period, was as follows:

BY THE JUDGES.

In the year 1797,	Decreed or Dismissed	12,674,	Adjusted by parties	2187,
1798,	ditto ditto	10,670,	ditto -	1121,
1799,	ditto ditto	10,705,	ditto -	1167,
1800,	ditto ditto	8261,	ditto -	1459,
1801,	ditto ditto	7443,	ditto -	1148,

BY THE REGISTERS.

In the year 1797,	Decreed or Dismissed	17,682,	Adjusted by parties	6087,
1798,	ditto ditto	19,946,	ditto -	3698,
1799,	ditto ditto	14,644,	ditto -	2590,
1800,	ditto ditto	15,217,	ditto -	3128,
1801,	ditto ditto	12,304,	ditto -	2341,

accidental

accidental circumstances, the effect of which might be removed by a temporary arrangement, for the trial and decision of the causes in arrears; without a permanent alteration of the established jurisdictions; it was deemed expedient that provision should be made for the occasional appointment of an assistant judge, to assist in the trial and decision of causes depending before the judge of any zillah or city court in which such an appointment might at any time be required. It was accordingly provided by Regulation XLIX, 1803, that "when the number of civil causes depending before the judge of any zillah or city court may be such as to require the aid and appointment of an assistant judge, for the speedy investigation and decision of such causes, the Governor General in Council, at the recommendation of the court of sudder dewanny adawlut, or otherwise, if it shall appear to him expedient, will appoint an assistant judge for the zillah or city, wherein it may be requisite; to be denominated, "assistant judge of the dewanny adawlut;" who, previously to entering upon the execution of the duties of his office, shall take and subscribe the same oath as is directed to be taken and subscribed by the judges of the zillah and city courts." The assistant judges so appointed are empowered to try and decide, according to the regulations in force for the administration of civil justice, any depending causes that may be referred to them by the judge of the zillah or city in which they may be appointed to officiate. The judges of the zillahs and cities, wherein assistant judges may be appointed, are authorized to refer to them, from time to time, during the continuance of such special appointments, any causes depending in their respective courts; whether original suits, or appeals from the decisions of their registers, or of the native commissioners. The selection of the particular causes to be so referred is left to the discretion of the judge; but he is to be guided, as far as circumstances may admit, by the general rule which directs, with certain exceptions, that

Denomination;
and oath to be
taken by them.

What causes
may be tried
and decided by
them.

Rule for re-
ference of de-
pending causes
to them.

Court of the
assistant judge
where to be
held.

What pleaders
to attend it.

And what law
officers to ex-
pound the Hin-
doo or Maho-
medan law

Process how to
be issued and
executed.

And penalties
for resistance to
it.

Assistant judges
to be guided by
the rules pre-
scribed for the
trial of causes in
the zillah and
city courts.
And their de-
cisions to be
final, or ap-
pealable, as is
passed by the
judges of those
courts.

General obser-
vations on the
foregoing pro-
visions, for ad-
ministering
civil justice in
the first in-
stance.

depending causes be brought on for trial according to the order in which they are filed. The assistant judges are to try the suits referred to them in open court, to be held in the court house of the zillah or city dewanny adawlut, or in some convenient place adjacent thereto. The judge is to allot a sufficient number of the established pleaders to attend the court of the assistant judge; and the Mahomedan and Hindoo law officers of the zillah or city court are to expound the law in every case before him, wherein it may be requisite. All process, in suits referred to an assistant judge, is to be issued under his signature, and the seal of the zillah and city court; the officers of which are to execute it in like manner as similar processes are issued in causes tried by the judge; and it is to be considered of the same force and validity, incurring the same penalties for disobedience or resistance, as process signed by the judge. In the trial of all causes referred to him, the assistant judge is to be guided by the same rules as are prescribed for the trial of the same causes before the judges of the zillah and city courts; and his decisions are to be held final, or appealable to the provincial court of appeal, according as the cause would, or would not, have been appealable to the provincial court, if it had been decided by the judge of the zillah or city court.

WHAT causes are so appealable, will be specified after stating the general constitution of the provincial courts. But in concluding the foregoing imperfect recital of the provisions made by the existing Regulations, for the administration of civil justice in the first instance, it is impossible to withhold the acknowledgement due to the benevolence, equity, and policy, which have dictated them; with such evident attention to the interests of humanity; the rights, laws, and prejudices of the people inhabiting this portion of the British Empire; and the surest, as well as the most honorable, means of maintaining that empire in India, by establishing it upon the

the solid foundations of justice, protection, and conciliation. In the simplicity of the form of action allowed in all cases, varying only as regular or summary, except in the mode of commencing a suit against Government; as well as in the general tenor of the rules prescribed for the pleading, trial, and decision, of every suit cognizable by the civil courts, and determinable either by specific law, or on principles of reason and equity; the intelligent regard shewn to local circumstances affecting the judicial officers, as well as the suitors, and their pleaders, is equally conspicuous. If, notwithstanding the number of civil courts which have been established; the permanent means afforded for the speedy investigation and decision of inconsiderable causes, by the establishments of native commissioners; as well as in suits to a larger amount, by the extended reference now authorized to the registers of the zillah and city courts; and the occasional aid provided for, to expedite, when necessary, the whole of the causes depending in those courts, by the appointment of assistant judges; it should still be found that the laws are not, in any instance, administered with that promptness, certainty, and facility, which are requisite to ensure their full beneficial effect; it cannot be doubted that experience will suggest further remedies to supply this radical defect; and that such measures as may be practicable, expedient, and sufficient for this purpose, will be adopted. If any thing be wanting to secure the integrity of the native commissioners, who now receive no fixed salary, but are allowed the institution fee, of one anna per rupee, in all causes decided by them upon an investigation of the merits, or adjusted before them by the agreement of parties; it may also be confidently presumed that so essential a requisite to the purity, impartiality and consequent utility, of every judicial establishment, which has been so wisely and liberally granted to the present European courts of judicature, will not be denied to those under native superintendents. These observations, however, are not so much intended to apply to any known abuses of a general, or important nature,

in

in the subsisting inferior courts of civil justice; or to any defects now unprovided for in the superior courts; as to obviate the force of the only objections which have been, or can be, offered to the adequacy and efficiency of the judicatures actually established, in accomplishing the just and humane design of their institution; and of the rules which have been framed for their guidance.

R. V. 1, 1793.
R. IX, 1793.
R. IX, 1803.
General reasons
for the establish-
ment of courts
of appeals.

To provide against the possibility of unjust or erroneous decisions in courts of primary jurisdiction; as well as to secure a strict regularity of proceeding in all such courts, by rendering their judgments and the grounds of them, the evidence taken, and every act done or ordered upon the original trial, subject to the inspection and revision of a superior authority; it has been deemed expedient, in all countries where a system of legal administration has been introduced, to constitute courts of appeal, or review, with powers more or less extensive, according to the objects intended by them. The public utility of such superior courts, in rectifying error, maintaining regularity, and enforcing duty, is obvious; and provided the course of justice be not too much delayed, or made too expensive by appeals, the admission of them, within a limited period, must essentially conduce to the perfection of every judicial establishment. To render them efficient however, as well as to prevent their being perverted from their just object, to purposes of procrastination, litigiousness, and oppression; it is necessary that they should be easy of access to all persons who may have occasion to resort to them; and that the appeals preferred to them should be investigated and decided with dispatch. But previously to the year 1793, the only courts of appeal under this presidency were at Calcutta. In suits regarding rent or revenue, which were excluded from the jurisdiction of the dewanny adawlut, and cognizable in the first instance by the collectors, the appeal, (as already noticed,) lay to the Board of Revenue; and ultimately to the Governor General in Council. In causes decided by the

And utility of
such courts,
provided they
are not attended
with excessive
delay or ex-
pense.

Facility of ac-
cess and dispatch
necessary to ren-
der them effi-
cient.

Courts of appeal
subsisting before
1793, in what
respects defec-
tive.

courts of mofussil dewanny adawlut, parties who considered themselves aggrieved by the decisions of those courts, had no tribunal to which they could apply for redress except the fudder dewanny adawlut. This court being composed of the Governor General and Members of the Supreme Council, it was found requisite, with a view to prevent a greater number of appeals than the general administration of public affairs would allow of being heard, to restrict the admission of appeals to cases in which the decisions of the mofussil courts might be for an amount or value exceeding one thousand sicca rupees; or for lands the annual produce of which might be more than that sum, if assessed for the public revenue; or more than one hundred rupees, if exempt from the payment of revenue*. Under this limitation the greater part of the suits determined in the mofussil courts, (including the whole of those instituted by the lower classes of the people) were not appealable; and in suits that were appealable, persons residing in the interior parts of the country, whose occupations prevented their personal attendance in Calcutta, and whose circumstances would not admit of their entertaining a vakeel, at an unlimited expense, for the purpose of prosecuting an appeal, were often precluded, by the distance of their situation, from appealing against decisions with which they were dissatisfied. In addition to this impediment, arising from the local situation of the fudder dewanny adawlut, unavoidable delay, in hearing and determining the appeals preferred to that court, was frequently occasioned by interruptions to the regular sittings of the court; from the avocations of the Members of Government who composed it.

* Supposing the land-tax to be nine-tenths of the neat rent produce; at which rate it was formerly computed, when the assessment was fixed upon the ascertained or estimated annual rent, deducting the actual charges of collection, and *Malikanah* (the proprietor's income) at ten per cent; a neat product of one hundred rupees, from lands paying no tax, was valued as equal to a product of one thousand rupees from taxable lands. But when the proprietor's allowance was calculated at ten per cent upon the neat revenue paid to government, and not upon the rent; as was done when the lands were let in farm by Government and the farmer stipulated to pay the malikanah, distinctly from the public revenue; or when the rents were collected khas by the public officers, and the proprietor received ten rupees for every hundred, clear of charges and malikanah, carried to the account of Government; the proportion received by the latter, of the aggregate payments for tax and income, was 100 rupees of 110, or ten-elevenths.

Provincial
courts of appeal
established, to
remedy the de-
fects stated, for
Bengal, Bahar,
and Orissa.

To remedy these material defects; and, as stated in the preamble to Regulation V, 1793, "the jurisdiction of the courts of dewanny adawlut established in the several zillahs, and the cities of Patna, Dacca, and Moorshedabad, being extended, not only to the causes which were cognizable in the courts of mofadawlut, but to civil suits of all descriptions between individuals; and under certain restrictions between Government and its subjects; and it being essential to the prosperity of the country, that all persons, especially the cultivators of the soil, the traders and manufacturers, and the other classes of the lower and most industrious orders of the community, in the different parts of the provinces, who may be dissatisfied with the decisions of those courts, should have an appeal to a higher, court; to which they can have ready access; and that this court should be so constituted, that they may look up to it with confidence for speedy redress against unjust or erroneous decisions;" the Governor General in Council resolved, and enacted by Section II of the above Regulation, that four courts of appeal should be established; one in the vicinity of Calcutta, and one at the cities of Dacca, Moorshedabad, and Patna, respectively. Each court to be superintended by three judges; to be styled the first, second, and third, judge of the court, to which they may be appointed; and previously to entering upon the execution of their duties, to take and subscribe an oath, of the same tenor with that prescribed to be taken by the judges of the zillah and city courts. Three law officers, (a cauzee, moostee, and pundit) with a register, and an establishment of ministerial officers, were also attached to each court. A fifth court of appeal, constituted in like manner, for the province of Benares, was established by Regulation IX, 1795. And a sixth court, for the ceded provinces, has been instituted by Regulation IV, 1803. The designation of this court, which was originally denominated "the provincial court of appeal for the division of the provinces ceded by the Nuwab Vizeer," has been altered, under Regu-

lation

Constitution of
these courts

Provincial court
for Benares.

And for ceded
provinces.

lation IX, 1804, in consequence of the annexation of the territories ceded by DOULUT RAO SINDHERAH, to that of "the provincial court of appeal for the division of Bareilly;" at which place the court is held. By the same regulation, the territory in Boondelkhund, ceded by the PESHWA, is added to the jurisdiction of the Benares court. And by Regulation VIII, 1804, the zillahs of Allahabad and Gorakhpoor, in consequence of their being more contiguous to Benares, than to Bareilly, have been transferred from the jurisdiction of the provincial court for the division of Bareilly, to that of Benares; with a proviso that the courts of justice, and other public authorities, shall be guided in their decisions, and proceedings, in all matters relating to those zillahs, by the Regulations which have been, or shall be enacted, in conformity to Regulation I, 1803, for the internal government of the provinces ceded by the Nuwab Vizeer.

Annexed to
the Benares di-
vision.

With pro-
visions for
the annexed
districts.

THE particular zillahs and cities, included within the jurisdiction of the six provincial courts of appeal, are specified in the Regulations above mentioned; which further direct, that each court be held in a large convenient room, three days in every week, or oftener if the business shall require it; and that no rule, order, proceeding, or decree, shall be made, but on court days, and in open court. Two judges are required to hold a court of appeal; and no decree is valid unless passed by two judges present in court; who are to sign the decree passed by them. When a difference of opinion may arise, the opinion of the majority is to determine: or, if there be only two judges in court, the senior has a casting vote; except in cases wherein the decision of the provincial court is final; in which the senior judge has a casting voice, provided his sentiments go to affirm the decree of the inferior court; but if the senior judge declare his opinion, in opposition to the other judge present, that the decree of the inferior court should be reversed, or altered, the suits, on which

R. XVII,
1793, extended
to Benares by
R. XXV, 1793.
R. VII, 1793,
& XII, extended
to Benares by
R. XVI, 1795,
& XV,
R. III, 1797, &
VII.
R. XV, 1803.
General rules
for provincial
courts, and
powers of the
judges.

Authority of
senior judge, or
officiating su-
perintendent of
the court, when
two judges are
not present.

Provision for an
occasional se-
cond court of
appeal in the
Dacca division.

which such difference of opinion may exist, are to stand over for judgment until the absent judge shall attend; when they are to be decided by the majority of voices. The senior judge, (who does not proceed on the circuit of jail-delivery, but is fixed at the station of the court of appeal, for the purpose of superintending the business of that court, and forming a court of appeal with one of the other judges) is further empowered, in the eventual absence of both the other judges, to receive petitions of appeal; execute decrees and orders; summon and examine witnesses; and generally, to transact the current business of the court: but is restricted, in such cases, from admitting or rejecting any appeal which may be preferred after the prescribed period; as well as from passing a decision on any depending cause; and from altering any order which may have been passed by two or more judges of the court. This limited authority, for the currency of business, must also be considered to be equally vested in the second, or third judge of a provincial court, if at any time the only judge present; and consequently the officiating superintendent of the court. A fourth judge of appeal and circuit has been appointed for the Dacca division, in consequence of its extensive jurisdiction, and the interruption experienced in holding the court of appeal for this division, from two of the judges being often employed, at the same time, on the zillah and city jail deliveries. In consequence of an accumulation of appeals from this interruption, provision has likewise been made by Regulation IV, 1802, for constituting an occasional second court of appeal in that division, to consist of the second and third judges; when the whole of the four judges may be on the spot. But the object of this regulation being to provide for a speedy decision of the causes in arrear, the operation of it is to cease whenever this end shall appear to the sudder dewanny adawlut to have been sufficiently accomplished.

UNDER the original regulations of 1793, an appeal was allowed, in all cases, from the decisions of the zillah and city courts to the provincial courts of appeal. But to prevent the time of the latter from being occupied by petty causes, it was afterwards judged expedient (by Regulation VIII, 1794,) to vest the zillah and city judges with a final power of decision, in suits for money or personal property not exceeding in amount or value twenty-five sicca rupees; and by Regulation XXXVI, 1795, their decrees were declared final in appeals from decisions for money or personal property, passed by their registers under Regulation VIII, 1794; or the native commissioners appointed under Regulation XL, 1793. These provisions for Bengal, Bahar, and Orissa, were extended to the province of Benares, by Regulation LIV, 1795. But by Regulation XLIX, 1803, they are rescinded for the whole of those provinces, with respect to appeals from decisions of the register; and the following rules are substituted for all decrees which may be passed, by the judges of the zillah and city courts, in appeals from decisions of their registers, whether for money or other personal property; or for real property. “ If
 “ the suit be for personal property, or for any description of
 “ real property not being malgoozary or lakheraj land, and the
 “ amount or value adjudged or disallowed by the decree of
 “ the judge shall not exceed one hundred sicca rupees; or, if
 “ the suit be for land, and the judgment be for, or against, a
 “ claim to malgoozary land, the annual produce of which
 “ (as defined in Section III, Regulation IV, 1793,) may not
 “ exceed one hundred sicca rupees; or lakheraj land, the
 “ annual produce of which may not be above ten sicca ru-
 “ pees; or although the decree of the judge be for, or against,
 “ claims to personal or real property exceeding the amount,
 “ value, or produce, above specified, if the suit be within the
 “ limitation of causes referable to the register, and the decree
 “ of the judge shall confirm the decision of the register; the
 “ determination of the judge shall be final; unless the pro-
 “ vincial

R. III, 1793.
 § XX.
 R. V, 1793; § XII.
 General appeal to the provincial courts, allowed by the regulations of 1793.
 R. VIII, 1794, § VI, and XI.
 Limited, in certain cases, by subsequent regulations.

R. XXXVI, 1795; § IV.

R. LIV, 1795.
 R. XLIX, 1803, § VIII.
 Limitation of appeals fixed by regulations now in force, in Bengal, Bahar, Orissa, and Benares.

In what cases an appeal lies to the provincial courts, from decrees of the zillah and city judges, passed on appeals from decisions of their registers.

" provincial court of appeal deem it proper to admit a special
 " appeal to that court, under the discretion given by Section
 " XXIV, of this regulation. If the judge's decree reverse or
 " alter the register's decision, and the amount or value adjudg-
 " ed of disallowed by the decree of the judge, exceed one hun-
 " dred ficca rupees; or if the judgment so passed in opposition
 " to, or variation from, that of the register, be for or against
 " a claim to malguzary land, the annual produce of which
 " may exceed one hundred ficca rupees; or lakheraj land,
 " the annual produce of which may be above ten ficca rupees;
 " a further appeal shall lie to the provincial court of appeal,
 " under the prescribed rules for appeals to that court." By the
 same regulation the decrees of the zillah and city judges, which
 were before final in appeals from decisions of the native com-
 missioners, for money or other personal property, are also de-
 clared final in appeals from decisions, passed by the head na-
 tive commissioners, for personal or real property, not exceed-
 ing the limitation of causes referable to them; as well as in
 appeals from decisions of the commissioners of land suits in
 zillah Chittagong, in causes referable to such commissioners;
 provided that the provincial court may, in any particular case,
 admit a special appeal, if it shall appear to them proper, in the
 exercise of the discretion hereafter mentioned. But as, under
 the authority vested in the judges of the zillah and city courts,
 to refer all causes for personal property not exceeding fifty
 rupees, to any of the native commissioners appointed under
 them, as well as to refer all suits for personal property, not ex-
 ceeding one hundred rupees, to the head native commissioners,
 or to their registers, it is probable that no causes of this de-
 scription will be tried by themselves in the first instance; un-
 less from the nature of the suit, as involving some general
 question, or otherwise, it should appear to be of importance,
 although the sum directly at issue be of inconsiderable amount;
 and in such cases it is desirable that an appeal from their deter-
 mination should be open to the provincial court; such part of

R. XLIX,
 1803, § XII.
 Decrees of zil-
 lah and city
 judges declared
 final on appeals
 from decisions
 of the native
 commissioners.

R. XLIX,
 1803, § XXIII.
 But an appeal
 open to the
 provincial
 courts in all
 causes tried and
 decided by the
 zillah or city
 judges in the
 first instance.

Regulation VIII, 1794, as declared the decision of the judge to be final, in suits tried by himself in the first instance, for money or personal property, not exceeding twenty-five rupees, was rescinded; and an appeal now lies to the provincial courts of appeal, in Bengal, Bahar, Orissa, and Benares, in all causes whatever, that may be tried by the judges of the zillah and city courts in the first instance, viz. without a previous trial and decision by their registers; or by any of the native commissioners. This rule however has not yet been extended to the ceded provinces, in which the appeal to the provincial court (except in cases of default, provided for by the twelfth clause of Section XII, Regulation IV, 1803, and by Section XI, Regulation II, 1805,) is restricted by Section XXI, Regulation II, 1803, to causes in which the decree of the zillah court may be for landed property, the annual produce of which shall exceed two hundred sicca rupees, if malgoozary, or twenty rupees if lakheraj; or for money, personal property, or any other description of real property, the amount or value of which shall exceed two hundred sicca rupees.

This rule not yet extended to ceded provinces.

Limitation of appeals to the provincial court, in these provinces.

THE provincial courts, in general, are however authorized to receive appeals, whatever may be the amount or value at issue, in all cases wherein the judges of the zillah or city courts may have refused to admit an appeal from the decisions of their registers, or of the native commissioners, on any ground of delay, informality, or other default in preferring it; or, after having admitted the appeal, may dismiss it on the ground of some default, without investigation of the merits of the cause; as well as in all cases wherein the judges of the zillah and city courts may refuse to admit, hear, and determine, an original suit preferred to them, on the ground of delay, informality, or other default, in preferring it; or having admitted the suit, may dismiss it on the ground of some default, without an investigation of the merits of the case. A summary proceeding only is directed to be held on such appeals;

R. II, 1801, § IX.
R. IV, 1803, § XII.
R. XI, IX, 1803, § XXVI.
R. II, 1805, § XI.
Cases of default in which an appeal lies to all the provincial courts, whatever may be the cause of action.

Rule of proceeding in such cases.

appeals; and if it appear to the provincial court that the original suit in, or appeal to, the zillah or city court, was rejected or dismissed on insufficient grounds, it may order the zillah or city judge to receive the same; or to revive it if received and dismissed; and to try and determine the cause upon its merits, according to the regulations. If, however, such appeals shall, on enquiry, be found groundless and litigious, the provincial courts are directed to punish the appellant by a fine to government proportionate to the condition of the party and circumstances of the case. It is also provided by Section XXIV, Regulation XLIX, 1803; (which may be considered to have been virtually extended to the ceded provinces by Section X, Regulation II, 1805,) that "in all cases wherein a regular appeal may not lie to the provincial courts from the decrees of the judges of the zillah and city courts, it shall be competent to the provincial court to admit a special appeal, (on performance of the general conditions of appeals) if on the face of the decree of the zillah or city judge, or from any information before the provincial court, it shall appear to them erroneous, or unjust; or if from the nature of the cause, as stated in the decree, or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal. But this discretionary authority, vested in the provincial courts for the correction of erroneous judgments, in particular cases, is directed to be used with caution; and is declared not to intitle any party to demand, of right, an appeal to the provincial court, in cases wherein the judgments of the zillah and city courts are provisionally made final. To obviate considerable delay in the determination of appeals from decisions of the native commissioners, and registers, when the zillah or city judge may be absent from his station, or, from whatever cause, there may be no judge, or person authorized to officiate as such, on the spot; as well as when the register may be authorized to officiate as judge, and is consequently restricted from

R. XLIX, 1803, § XXIV.
Discretion vested in provincial courts to admit a special appeal, in all cases wherein a regular appeal may not lie to them.

Caution to be observed in the exercise of this discretion.

R. II, 1805, § XIV.
In what cases provincial courts may remove, to those courts, appeals depending in the zillah or city courts.

from hearing any appeals from judgments passed by himself as registrar; the provincial courts are further empowered, (by the third clause of Section XIV. Regulation II, 1805) in all such cases, upon representation by either of the parties, to remove the appeal from the zillah or city court in which it may be depending; and to proceed thereupon as in other appeals before the provincial court.

THE stated limitation of appeals to the provincial courts is subject to a further restriction, with respect to the summary processes authorized by the regulations, in cases of forcible dispossession, or arrears of rent. The judgments given by the zillah and city courts in such processes being subsidiary to a regular suit in those courts, no appeal from them to the provincial courts is admissible, unless the ground of appeal be the irrelevancy of the regulations, which authorize a summary process, to the case appealed. After receiving the appeal, the provincial court are to dismiss it, with costs, if the stated ground of irrelevancy shall not appear established; or, if the regulations referred to appear inapplicable to the case, they are to reverse the irregular judgment given by the zillah or city court; and to pass such order thereupon as they may think just and proper. But it is provided that the above restriction shall not be understood to preclude the regular appeal, in cases wherein land or crops may be adjudged by the zillah or city courts to be forfeited to government, under the penalties already mentioned for employing an armed force to take or keep possession of disputed property. The vakeel of government is to sue for such forfeitures in the dewanny adawlut; and the judgment passed thereupon is subject to the general rules for appeals, as well as to the particular provisions respecting judgments of forfeiture in cases of resistance to the process of the zillah and city courts.

R. V. 1798,
§ VII.
R. VII, 1799,
§ XVIII.
R. XXVIII,
1803, § XXXV
Restriction of
appeals from
judgments on
summary pro-
cesses, in cases of
forcible dispos-
session, or ar-
rears of rent.

Admissible up-
on irrelevancy
of the regulati-
ons only.

But this restric-
tion not meant
to preclude a
regular appeal
in cases of for-
feiture to go-
vernment, for
employing an
armed force.

Such forfeiture
how to be sued
for.

IT being a general rule for the trial and determination of all

R. V. 1792,
§ XI.

R. IV, 1803,
c. XI.
General rule of
proceeding for
the provincial
courts.
To be guided
by the rules pre-
scribed for the
Zillah and city
courts.

all suits and appeals before the provincial courts, that they are to proceed, except as to hearing witnesses and receiving evidence, * in the same manner and with like powers and authority, and subject to the same restrictions, limitations, and exceptions, as are prescribed to the Zillah and city courts; it will be sufficient to notice the principal additional rules, which have been enacted for receiving, trying and deciding, appeal, &c, or other matters cognizable by, the provincial courts.

R. V, 1793,
c. XII.
R. XII, 1797,
c. IV.
R. IV, 1803,
c. XII.
R. II, 1805,
c. XII.
Petitions of ap-
peal, what to
contain, and
where to be pre-
sented.

In all cases appealable, under the regulations, to the provincial courts, the petition of appeal, stating particulars of the decree appealed against, and assigning some cause, special or general, for appealing from it, was originally allowed to be presented either to the court in which the decree had been passed; or to the court of appeal. But this option having been found productive of delay in the admission of appeals, from the necessity of frequent references for information, it was revoked by Regulation XII, 1797; and all persons desirous of appealing to the provincial courts, or to the sudder dewanny adawlut, were required to present their petitions of appeal, in the first instance, to the court wherein the decree appealed against might have been passed; which court, in the event of its rejecting the petition, on whatever ground, was directed to furnish a copy of its order of rejection to the appellant; who was declared at liberty to present his petition of appeal, with such order, or a declaration that it was applied for, and not obtained, to the provincial court or sudder dewanny adawlut. The absolute revocation of the option first given having produced inconvenience and hardship, however, in particular cases, wherein the parties were not fully advised of the rules referred to, it has been recently provided, by Section XII, Regulation II, 1805, "that the court of sudder dewanny adawlut and the several provincial courts of appeal may, in any particular case, if they

" see

“ see reason for so doing, receive and admit petitions of appeal in cases appealable to them under the regulations; instead of requiring the appellant to present his petition of appeal, in the first instance, to the court in which the judgment appealed from may have been passed.” It is also provided by Section XXIV, Regulation XLIX, 1803, and Section X, Regulation II, 1805, that any petitions for the special appeal authorized by those sections are to be presented to the provincial courts and sudder dewanny adawlut respectively. The petition of appeal, (wherever it may be presented) is to be accompanied, in all cases, with an attested copy of the decree appealed from, or a written declaration that such copy was applied for ten days after the decision, and was denied. It must also be accompanied (if not preferred in *forma pauperis*) with the prescribed institution fee; and with security for the payment of any costs that may be awarded on the appeal, including the fees of the appellant’s pleader, if he shall intend to employ one for prosecuting his appeal. The petition, fee, and security, are to be presented within three months * after the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel; and it is declared, that the presenting a petition of appeal before the expiration of the time limited, without the prescribed institution fee and security for costs, or proof of inability to furnish the same, (under the rules hereafter mentioned for paupers) shall not be considered to preserve the appellant’s right of appeal. But the court of appeal is, in all cases, authorized to admit the appeal after the expiration of the prescribed period, if the appellant can shew just and reasonable cause, to their satisfaction, for not having preferred it within the time limited; recording their reasons for admitting it in such cases. If the

R. XLIX, 1803,
§ XXIV.
R. II, 1805,
§ X.
Petitions for
special appeals
where to be
presented

What to accom-
pany the peti-
tion of appeal,
in all cases.

R. VI, 1797,
§ VI, and VII
R. II, 1798,
§ IX, and X
R. IV, 1803,
§ XII.
R. XLIX, 1803,
§ VI, and VII.

R. II, 1805,
§ VIII.
Time limited
for preferring
appeals.

But courts of
appeal may ad-
mit them, after
prescribed pe-
riod, on suffi-
cient cause.

* Three calendar months are specified in the regulations; and the sudder dewanny adawlut, in a case before that court on the 26th September 1797, declared their opinion that three months of the English calendar were intended, but as the regulations do not expressly state English months, and the appellants had preferred their appeal within three Bengal months, and pleaded ignorance of the English calendar, the court admitted their appeal.

R. V, 1793, 3
XII, and XIV.
R. XIII, 1796.
R. V, 1798, §
III, to VI.
R. IV, 1803,
6 XII.

In what manner,
and under what
security, the ex-
ecution of de-
crees may be
stayed during
appeals.

Provision to
prevent an abuse
of this rule.

Security to be
taken from re-
spondent, if the
decree be exe-
cuted.

Lands adjudged
to be held in

appellant be desirous of staying the execution of the decree passed against him, during the trial of his appeal from it, he is further required to give good and sufficient security, in a sum equal to one year's produce of the property adjudged, if the decree be for land, or any description of real property; or, in other cases, in an amount equal to the sum or value decreed; for the performance of the decree which may be passed upon the appeal. If such security be given by the appellant at the time of preferring his appeal, or within a reasonable period to be fixed for the purpose, the court, in which the decree appealed from may have been passed, is to suspend the execution of it during the appeal; but to prevent an abuse of this rule, and encouragement of litigious appeals, the courts of appeal, in all cases wherein they may confirm the decree appealed from, are directed to adjudge interest at the rate of one per cent per mensem, on the amount receivable by the respondent under such decree, from the date of it; and are also authorized to punish appeals which may appear litigious by a proportionate fine to government*. If the appellant shall not give security for staying execution of the decree, and it shall consequently be put in force against him, notwithstanding his appeal; the prescribed security is to be taken from the respondent, in whose favor the decree is executed for the due performance of whatever judgment may be passed on the appeal. The decree is not to be put in execution, during an appeal, without such security†. But as cases may occur

* On the 21st February 1798, the sudder dewanny adawlut, upon a reference from the Calcutta provincial court, determined, that "if a party against whom a decree may be passed, and ordered to be put in execution, allow the execution thereof to take place, either wholly or in part, without preferring an appeal, and tendering the prescribed security for staying the execution of the decree, he should not afterwards be allowed to stay the execution." But it has been since ruled, that when the decree be for both land and money; and may have been enforced as far as respects the former only, when an appeal is preferred and security tendered, the execution of the pecuniary part of the judgment should be suspended during the appeal.

† Either party may object to the sufficiency of the security offered by the opposite party; and all objections against the responsibility of sureties claim consideration, as well as any requisite investigation, if made before the security has been admitted. But the court of sudder dewanny adawlut, in a case before it on the 27th March 1799, determined, that an objection not made at the time of admitting the security taken, and not founded upon subsequent circumstances, was inadmissible after the security had been received and approved.

wherein neither the appellant nor the respondent may be able to give the prescribed security, it is provided that, in such cases, the property adjudged, (viz. any landed property, the right or possession of which may be transferred by the judgment appealed from,) shall be held in attachment during the appeal, or until such time as one of the parties may be able to give the required security, by the collector of the district, wherein the land may be situated, at the expense of the party who may be ultimately declared entitled thereto. The courts of appeal are further authorized, when from delay in the decision upon appeals the security first given may appear insufficient, to require any additional security which they may deem necessary; and in default of its not being given within a reasonable period, to proceed in like manner as if no security had been given in the first instance. It may be added that any private transfer or mortgage of property included in a judgment appealed from, whilst the appeal is depending, is declared to be null and void, if the ultimate judgment shall be against the party who may have transferred or mortgaged the same during the appeal; and that provision is also made to secure the rights of respondents, as far as possible, in the event of any property adjudged to them, but left in the appellant's possession, being sold by government, whilst the appeal is pending, or before the final judgment be put in execution, to make good an arrear of the public assessment; for which all lands, by whomsoever possessed, are held answerable, in preference to any other claims thereupon*.

attachment by the collector, if neither party can give security, during the appeal.

In cases of delay, additional security may be required, if that first given appear insufficient.

R. V, 1798, § IV, and V.
R. IV, 1803, § XIV.
Private transfers and mortgages of adjudged property, during appeals, declared null and void.

And further provision made for securing, as far as possible, the rights of respondents in event of a public sale for arrears of assessment.

WHEN a petition of appeal and its required accompaniments

R. V, 1798, § XII, and XIV.

* The tax upon land is the indefeasible right of government, or rather of the public body represented by it; and cannot be affected by any private alienation or assignment. But in the case stated, it is provided, that if the land sold be purchased by the respondent, he shall be entitled, on a final judgment in his favor, to recover from the appellant his purchase money, and all expenses, with interest thereupon; or the purchase money and interest, if the land be publicly sold to any other person; or the land itself, with all the profits arising therefrom, if it be proved to have been directly or indirectly purchased by the appellant.

are

R. XII, 1797;
§ III.
R. IV, 1803,
§ XII, and
XIII.
Zillah or city
court, how to
proceed, when
the cause is ap-
pealable, and
the petition of
appeal duly pre-
sented, with its
required accom-
paniments.

are delivered, within the prescribed period, to the zillah or city court; and the cause is clearly appealable to the provincial court; the judge receiving the petition of appeal is to transmit it (with a copy of the decree appealed from; an extract from his proceedings shewing the performance of the conditions of appeal; and information whether the decree has been put in execution, or otherwise;) to the provincial court; and is at the same time to cause notice in writing to be given to the appellant that, within fifteen days, the proceedings held in the cause will be certified to the provincial court; and that if he shall not proceed in the appeal within six weeks after the petition of appeal shall have been filed in the provincial court, his appeal will be dismissed; unless he shall shew reasonable cause, to the satisfaction of that court, for not having proceeded in it *. The judge is further directed, within fifteen days after the receipt of the appeal, to certify under his hand and official seal, to the register of the provincial court, the record duly made up and authenticated; including the original complaint, answer, replication and rejoinder; the depositions, exhibits, and every other original paper read in the cause: keeping attested copies thereof, as records of the zillah or city court. If any original paper cannot be transmitted, from having been entered in a book relating to other causes; or from its being lost or mislaid; an authenticated copy, or transcript of the entry, of such original paper, is to be certified to the provincial court. This rule however applies only to cases in which the appeal may have been regularly preferred to the zillah or city judge, within the prescribed period, and he may enter-

In what cases
the zillah or ci-
ty judge may
reject the peti-
tion of appeal;
furnishing the

*. The prescribed written notification to the appellant must be given in all cases; although he may be verbally informed of the admission of his appeal, or may know it from his vakeel; and an omission of the notice required by the regulations will save the appellant from dismissal of his appeal for non-attendance to prosecute it. This was determined by the court of sudder dewanny adawlat in a case before it (KARSHI DUT, versus KANAI SINGH,) on the 6th July 1796.

tain no doubt that the cause is appealable under the regulations. If it appear to him not to be appealable, or if the petition of appeal be not delivered to him, as required, within the time limited, he may reject the petition; furnishing the party with a copy of his order of rejection; and wait instructions from the provincial court.* On receipt of the petition of appeal by the provincial court, (whether transmitted to it by the zillah or city judge, or presented to it by the appellant or his vakeel,) if the appeal be admitted, a summons is issued to the respondent, through the judge of the court in which the cause may have been tried; who is at the same time required to certify the record of the original trial, if the petition of appeal shall not have been received from him in the first instance. If the respondent is not to be found, or from whatever cause the summons cannot be served upon him, the judge is to proceed by proclamation, in the same manner as already stated with regard to defendants in the zillah and city courts, upon whom a summons cannot be served; and if, after such proclamation, the party shall not appear as required, either in person or by vakeel, the provincial court is to try and determine the cause *ex parte*, in the same manner as if the respondent had appeared.

party with a copy of his order of rejection.

R. V. 1793, § XV, and XVI. R. IV, 1803, § XV, XVI, and XVII. In what manner the provincial court proceeds on receiving a petition of appeal.

And proceeds against respondents upon whom the summons cannot be served.

In what case the appeal to be tried *ex parte*.

THE provincial courts are empowered, in cases, which may appear to them not to have been sufficiently investigated in the zillah or city court, or for any other cause that may be deemed reasonable by them, either to receive such further evidence as they may think necessary for the just determination of the suit, and give judgment thereupon; or to refer the suit back to the court in which it originated, with special directions to the judge regarding the new evidence he is to receive respecting it; as may be deemed by the court most conducive to justice and the convenience of the parties and

R. V. 1793, § XVIII, XIX and XX. R. IV, 1803, § XVIII, XIX and XX. Authority of the provincial courts in cases which may appear not to have been sufficiently investigated.

* This is not expressly stated in the regulations; but is clearly inferable from the rules prescribed.

Further evidence, showing to be taken, if received in the provincial court.

Power of provincial courts the same as those of zillah and

witnesses; recording in every case their reasons for exercising the power thus vested in them.* If the provincial court judge it proper to receive further evidence themselves, they are authorized, either to examine the witnesses produced, *viva voce*, in open court; or to direct their register to take the depositions of the witnesses, in the presence of the appellant and respondent, or their vakeels; who are to be at liberty to put any questions they may think proper; and the examination, including such questions and the answers to them, is to be reduced into writing, signed by the deponents, and authenticated by the register. In dispensing with the oaths of particular witnesses, or examining them by commission; as well as

* In referring a suit back to a zillah or city court for further investigation, the provincial court may either direct the judge, after taking the further evidence required, to transmit it to the provincial court for their decision thereon; as is usually done, for the purpose of expediting a final decision upon the case, when a judgment upon the merits may have been given in the original court; and some particular point only remains to be further investigated: or may instruct the zillah or city judge to pass a second decision upon the further evidence to be taken by him, subject to a second appeal to the provincial court; as authorized by the regulations, whenever the suit may have been dismissed on the original trial upon the ground of some default, without investigation of the merits of the case. If the suit have been irregularly instituted in the zillah or city court, as in the case of a suit against government, not instituted in the mode prescribed by Section XI, Regulation III, 1793, and consequently tried and determined without the communication to, and order from, the Governor General in Council, required by that section, the provincial court (as well as the sudder dewanny adawlut in similar cases) may nonsuit the Plaintiff, on the ground of such irregularity; and direct him to prefer his claim *de novo* in the manner prescribed by the regulations. But if the suit have been regularly preferred in the zillah or city court, the provincial courts are not authorized, upon an appeal from the original decision, or the sudder dewanny adawlut upon an appeal from the judgment of the provincial court, to direct that the plaintiff's claim be instituted *de novo*. This was determined by the court of sudder dewanny adawlut in the case of HURPURSHAD DOBEE versus BIRJASHHEEMUL, on the 7th September 1796. It may be useful to add that, in the case of Rajah MAHANUND appellant against CHOLAM SUDUR, the former contested the authority upon which the latter commenced an action against him in the court of zillah Moonsledabad; and having appealed to the provincial court against an order of the zillah judge for admitting such authority, the sudder dewanny adawlut, upon a reference from the provincial court whether such interlocutory appeal were admissible, determined, on the 1st March 1798, that it should be admitted. The court, at the same time, expressed their concurrence in opinion with the provincial court, that "it is not, in general, necessary or proper to interfere with the processes of the zillah courts, respecting depending suits;" but remarked that "in particular cases, such as the present, wherein the defendant objects to the authority of the plaintiff to institute the suit against him, and when an appeal may be preferred against the decision passed in the zillah court upon such preliminary objection, an immediate and final decision thereupon, by the courts of appeal, is obviously desirable for all the parties concerned; and appears to the court consistent with the meaning and intention of the regulations, as conducive to the ends of justice."

in proceeding against any witnesses who may refuse to be sworn, or to give evidence, or to subscribe his deposition; or who may be guilty of wilful and corrupt perjury; and generally in all cases provided for by the rules before stated for the zillah and city courts; the same powers are vested in the provincial courts of appeal. The stated penalties, for refusal to any process of the zillah or city courts; are also extended to all similar refusal of any process, rule, order, or decree, which may be issued from a provincial court. The only further special provision relative to appeals to the provincial courts, which it appears requisite to notice, is that, if the appeal be preferred against a decision founded upon an award of arbitration, it is to be dismissed with costs, unless it be fully proved, by the oaths of two credible witnesses that the arbitrators have been guilty of gross corruption or partiality in the cause. It is however necessary to observe upon the rule contained in Section XXI, Regulation V, 1793; (and Section XXI, Regulation IV, 1803, for the ceded provinces,) whereby the provincial courts are authorized to dismiss an appeal which the appellant may not proceed in for six weeks, unless he shall shew reasonable cause for not proceeding in it; that the option which the plaintiffs in the zillah and city courts have, in cases of nonsuit, to institute a new suit, does not extend to appeals dismissed for non-prosecution or other default; which may indeed be revived, upon sufficient cause shewn to the satisfaction of a superior court of appeal; but cannot, under any existing regulation, be renewed by a second appeal in the same cause. The explanation given by the sudder dewanny adawlut to the zillah and city courts, (that before the judgment of nonsuit be passed, against a party neglecting for six weeks to perform any act required from him in the prosecution of the suit, he should be called upon to shew cause for not having proceeded in it) is therefore not only equally applicable to the nonsuit of appellants, for neglect in the prosecution of their appeals; but demands the most

cases, in which the deposition of a witness is required, and the refusal of a witness to be sworn, or to give evidence, or to subscribe his deposition.

R. V. 1793, § XVIII, and XXI, and R. IV, 1803, § XVIII, and XXI.

Penalties for refusing process of provincial courts, the same as for refusal to process of the zillah and city courts.

R. V. 1793, § XXVIII.

R. IV, 1803, § XXVIII.

In cases of arbitration, appeal to be dismissed, with costs, unless the corruption or partiality of the arbitrators be proved.

R. V. 1793, § XXI.

R. IV, 1803, § XXI.

Remark upon power vested in the provincial courts to dismiss appeals not proceeded in for six weeks.

strict observance from every court of appeal, to obviate the injurious consequences that must ensue, if the party should not, by wilful neglect, have justly subjected himself to the penal dismissal of his appeal with costs.*

R. III, 1793, § XIX.
R. V, 1793, § IX.
R. III, 1803, § XIX.
R. V, 1803, § IX.

Prohibition of correspondence, by letter, between provincial, zillah, and city courts, relative to depending causes or other judicial matters, and mode of communication to be observed by them respectively.

R. V, 1793, § XV.
R. IV, 1803, § XV,
Process, to par-

It has already been remarked that the provincial courts, as common with the zillah and city courts, are prohibited from corresponding by letter with the parties in any suits, or matters, within their cognizance. They are also prohibited from corresponding by letter with each other, respecting any depending cause, or upon any matters on which they may not be specially empowered to correspond. When a zillah or city judge shall have occasion to communicate to a provincial court any information that may be required from him by the court; or which he may deem it necessary to submit respecting any cause or matter that may be before it; he is to certify it to the court by a writing under his official seal and signature. When a provincial court shall have occasion to issue an order to the judge of any zillah or city court, or to require information from him on the subject of any suit or matter before them, they are to issue a precept under the seal of the court, and the signature of their register, commanding him to execute the order, or requiring him to furnish the information, and the judge to whom the precept may be directed, is to perform the exigence of it, or return good and sufficient reason why he has not done it. All process to parties and witnesses, and every rule or order whatever, which may be issued by the provin-

* Appeals are frequently withdrawn, and the investigation of them discontinued, upon a compromise between the parties; who deliver to the court, in such cases, deeds of agreement and acquittance denominated *Rāzeenāmah*, and *Sāfzenāmah*. An application to revive an appeal so discontinued, on the ground of the conditions, upon which the *Rāzeenāmah* had been granted by the appellant, not having been fulfilled by the respondent, was refused by the sudder dewanny adawlut, in the appeal of GUDADHUR MITA, versus MOORLEEDHUR MITA, on the 14th December 1796; as in this case, the appellant might have a new action against the respondent. But to save the expense and delay of a new suit; as well as to encourage the amicable adjustments of parties; whenever the deeds of agreement, on which an appeal may be withdrawn, specify distinctly the terms of compromise, it may be just and expedient to enforce them, as in execution of a decree of court.

cial courts, respecting cases depending before them, or the execution of decrees passed by them, is to be written or printed in the Persian and Bengal languages, in Bengal and Orissa; or in the Persian and Hindoostanee languages in the other provinces; to be sealed with the seal of the court; and signed by the register: all such, process, rules, and orders, to be served or executed on any parties, witnesses, or other persons, not being in actual attendance on the provincial court, are to be directed to the judge of the zillah or city court, in which the cause may have originated; or in whose jurisdiction the disputed lands may be situated; or the parties may reside. Every process, rule, and order is to limit a certain time in which it is to be served, executed, and returned to the provincial court. If the judge of a zillah or city court to whom any process, rule, or order, may be directed, shall willfully disobey, or neglect to perform, the commands contained in it; or shall make a false return; the provincial courts are enjoined to make an immediate report of such disobedience, neglect, or false return to the sudder dewanny adawlut; which court is authorized to suspend the judge, so offending, from his office; and is required to notify the suspension, with all relative proceedings, and papers, within ten days, for the determination of the Governor General in Council*.

ties and witnesses, and all judicial orders of provincial courts, in what language to be written, or printed.

And in what manner to be issued, served, and executed

Report to be made to, and power of suspension vested in, court of sudder dewanny adawlut, in cases of disobedience, neglect, or false return, by any zillah or city court.

" IF

* A question having arisen as to the language, in which precepts should be issued by the courts of appeal to the judges of the zillah and city courts, it has been explained and directed by a circular order from the sudder dewanny adawlut, under date the 12th October 1803, that all process to parties and witnesses, as well as all decrees and orders of court, respecting causes or other judicial matters, which, according to the regulations, must be written in the native languages, are to be enclosed in an English precept from the provincial court; and that the zillah and city judges, when they have any information to certify to the provincial courts, or to the sudder dewanny adawlut, or any return to make to them, relative to causes, or any matter of judicial cognizance, are to transmit an English certificate, or return, with a copy of their Persian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of orders. This rule of practice had before been adopted by the sudder dewanny adawlut in its communications to the provincial courts; and was directed, on the 20th April 1801, to be observed by the latter in any certificates or returns they might have occasion to transmit to that court. The provincial, zillah, and city courts were further instructed, on the 12th October 1803, to observe the same mode of communication in any applications they may have to make to each other, or to the collectors, or other European officers of government, for papers, information, or any other purpose; in which cases copies of,

N. V., 1793, § X.
R. IV, 1803, § X.
Charges of corruption, preferred to a provincial court, against the judge of a zillah or city court, how to be proceeded upon.

Provincial courts how to proceed in other cases, when the zillah and city judges may appear guilty of negligence or misconduct.

“ If any person shall charge the judge of a zillah or city court, before the provincial court of the division, with having been guilty of corruption in opposition to his oath; the provincial court is to receive the charge, and forward it to the sudder dewanny adawlut, provided the complainant shall previously make oath to the truth of the charge; (or subscribe the required declaration, if he be of the description of persons whom the court is empowered to exempt from taking an oath:) and give security, in whatever sum the court may judge proper, to appear, and prosecute the charge, when required.” In all other cases, not expressly provided for, when it may appear to the provincial courts, that the judges of the zillah or city courts have been guilty of negligence or misconduct in the discharge of their duty, they are to report the circumstances to the sudder dewanny adawlut, which court is directed to proceed thereupon, or upon charges of corruption against a zillah or city judge, in the manner hereafter stated. The object of these provisions, whereby the provincial courts are restricted from the exercise of any personal authority over the judges of the zillah and city courts, is to maintain the high respect due, in every station, to the judicial office and character; whilst, at the same time, a strict observance of the regulations is provided for by the power vested in the courts of appeal; and the subordination, indispensibly requisite in every department of the public service, is preserved for the courts of justice in general by the authority delegated to the sudder dewanny

of, or extracts from, their Persian proceedings, containing the substance of the application, are to be enclosed in a short English address, requesting compliance with the contents; or if it be a case in which the court is directed, or empowered, to issue an order and precept to any European officer of government, the Persian copy of such order, or an extract from the proceedings containing it, is to be enclosed in an English precept, under the seal of the court, and signature of the judge or register, requiring performance of the order so transmitted within a limited time; or that sufficient cause be assigned within such period why the order is not put in execution. The object of these instructions is not only to maintain the respect due to the European officers of government; which it is difficult to preserve in a Persian order, or application, directly addressed to them; but also to complete the record of every civil cause in the prescribed language, by having all orders, applications and returns, recorded at length in the original proceedings, and documents of the cause.

adawlut;

adawlut; and the superintending control of His Excellency the Governor General in Council.

THE provincial courts are further empowered “ to try and determine in the first instance, any suit or complaint, or any matter whatever of a civil nature, which may be transferred to them for that purpose by the Governor General in Council, or by the sudder dewanny adawlut;” also “ to receive any original suit or complaint, which may be cognizable in any zillah or city court within their respective jurisdictions; and to command the judge of such court to receive the suit, or complaint, and proceed to hear and determine it; provided proof shall be previously made to their satisfaction, that the judge refused or omitted to receive or proceed in it;” and lastly, “ to receive any petitions respecting suits or matters that may be depending or have been decided in any zillah or city court, within their respective jurisdictions; and provided it shall be proved to their satisfaction that the petition was presented, or that due means were used to effect its being presented, to the judge, and that he refused or omitted to receive it, and proceed on it; or in the last mentioned case that undue means were used by any of the officers of the court to prevent the petition being presented; the provincial court are empowered to issue a precept, under the seal of the court and attested by the register, commanding the judge to receive the petition, and to proceed respecting it according to the regulations.”

R. V, 1793, § VI, and VII.
R. II, 1798, § V, and VI
R. IV, 1833, § VI, VII, and VIII.

Further power of the provincial courts to try suits referred to them by government or the sudder dewanny adawlut. To receive and order the trial of suits cognizable in the zillah and city courts, in certain cases.

And to receive and direct the regular proceedings upon petitions respecting matters depending in the zillah and city courts, under certain provisions.

THE public utility and importance of the provincial courts, which have been thus established, for the supervision of the courts of original jurisdiction; and to receive appeals from their decisions, in every case wherein the suit may not have been already heard in appeal by the zillah or city judge, after being originally tried by his register, or a native commissioner; as well as in all cases heard by the judge in appeal

Concluding observation on the utility and importance of the provincial courts of appeal.

peal from his register's decision, if the latter be reversed or altered by the second judgment, and the amount or value, adjudged or disallowed, exceed one hundred sicca rupees; cannot require any lengthened comment, after what has been stated of the consequences arising from the want of local courts of appeal, before these were constituted. It will be sufficient to quote the words of the illustrious Personage by whom they were proposed*. "These courts will be the great security to government for the due execution of the regulations; and the barriers to the rights and property of the people. Their decisions will command respect; and at the same time that they will give security to property, and afford protection to the people, their weight and influence will contribute greatly to the vigor and stability of our internal government. A great part of the property of the country will be held under their decrees; and their decisions on cases, and the rights of individuals, will in many instances, in course of time, have the force of law."

* From the public minute of Marquis CORNWALLIS, recorded on the 11th February 1793. The following extract from the same comprehensive record, (which is appealed to as forming the basis of the system established in 1793,) states precisely the degree of control intended to be exercised by the provincial courts over the judges of the zillah and city courts. "From the very respectable footing on which the judicial officers are proposed to be placed, and the care which, it is to be presumed, will always be taken to select persons who are best qualified, by abilities and integrity, to fill them, I am persuaded that instances of corruption, or other misconduct, in any of the judges, will rarely occur. It is necessary however, upon general principles, that such cases should be provided against, and the following measures appear best calculated for the purpose. The provincial courts of appeal should be empowered to receive any charges that may be preferred to them against the judges of the zillah or city courts. But to prevent the characters of these judges being wantonly aspersed, rules should be laid down to deter people from making groundless accusations. The provincial courts should not be permitted to make any inquiries, in the first instance, into the charges that may be preferred against the zillah or city judges; but should be directed to forward them to the sudder dewanny adawlut. This court should issue a special commission to the provincial courts to make such enquiries and to take such evidence respecting the charges as it may think advisable. The observance of this formality will be essential. It will not obstruct the bringing forward of well founded complaints: at the same time it will operate to deter people from preferring groundless charges. To delegate to the provincial courts of appeal a power to enquire into such charges, without a previous reference to the sudder dewanny adawlut would, in fact, be making the judges of the zillah and city courts personally subject to their authority. This would soon deprive the zillah and city judges of all weight and consequence in the eyes of the people, and lessen that respect with which, it is necessary, they should look up to their decisions. The judges of the provincial courts should possess no authority over the judges of the zillah and city courts personally. Their control over them should be only that of a superior court, empowered to revise their decrees, when regularly brought before them in appeal."

FROM

From all decrees of the provincial courts, for landed property exempt from the public assessment, the annual produce of which might exceed one hundred sicca rupees; or for lands paying revenue to government, the produce of which might exceed one thousand sicca rupees per annum; or for any other description of real property, or for money or other personal property, the value or amount of which might be more than one thousand sicca rupees; an appeal was allowed, by Regulation VI, 1793, to the court of sudder dewanny adawlut; consisting of His Excellency the Governor General, and the Members of the Supreme Council; with the cauzyool-cuzzaut, or head cauzy, two mooftees, or expounders of the Mahomedan law, two pundits versed in the Hindoo law, a registrar, assistants, and other ministerial officers. But the appeals preferred in consequence being found to occupy too much of the court's time, with suits for personal property below five thousand rupees; which prevented the decision of causes of greater magnitude; the decrees of the provincial courts were, by Regulation XII, 1797, declared final for money, or personal property, not exceeding in amount or value, the sum of five thousand sicca rupees. This limitation proving insufficient to answer effectually the purposes intended by it; and the experience which the provincial courts had obtained, in the investigation of suits for landed and other real property, appearing to render it unnecessary to continue the distinction made in the rules for appeals, between personal property and its equivalent value in real property, the decrees of the provincial courts were, by Regulation V, 1798, made final "for landed or other real property, not exceeding in value the sum of five thousand sicca rupees, according to the usual mode of estimating the value of such property; viz. if the land be malgoozarry (paying revenue to government,) the annual produce of which, as described in Section III, Regulation IV, 1793, may not exceed five thousand sicca rupees per annum; or if the land be lakhetaj

" (exempted

R. VI, 1793, §
X.
R. XII, 1797,
§ II.
R. V, 1798, §
II.
In what cases
an appeal was
formerly allow-
ed to the sud-
der dewanny
adawlut.

Limitation of
appeals to that
court by Regu-
lation XII,
1797.

Further limit-
ation by Regu-
lation V, 1798.

“ (exempted from the payment of revenue to government.)
 “ the annual produce of which, as described in the above-
 “ mentioned regulation, may not exceed five hundred ficca
 “ rupees per annum; or if the property adjudged be a house,
 “ tank, garden or real property of any other description than
 “ the foregoing, the computed value of which may not ex-
 “ ceed the sum of ficca rupees five thousand.*” It was at

* The proportion of the public assessment, to the rent produce of lands subject thereto, having been estimated, before the land tax was fixed in perpetuity, at nine-tenths of the entire rents of each estate, (or ten-elevenths, in some cases, as before stated,) after deducting the expenses of management; and the general valuation of lands being a ten years purchase of the annual profit derivable from them; the value of *Malgoozary* lands, paying revenue to Government, has been computed as equal to the entire rent produce of one year; (equivalent to the proprietor's income for ten years, after deducting the charges of management and tax on his estate;) but as *Lakheraj* lands, held exempt from the public assessment, are not chargeable with any tax to government, their value is computed at ten times their neat annual rent product. A description of lands called *Malgoozary Ayna*, the assessment upon which is usually about one-third of their produce, not being exactly within either of the above descriptions, (malgoozary or lakheraj) it has been determined by the sudder dewanny adawlut (on the appeal of AZIM-OO-DERN versus FATIMA BIBBY, 7th September 1796;) that such lands, with respect to the right of appeal from decisions respecting them, should be valued at ten times their neat rent produce, after deducting the amount of the tax assessed upon them. It has also been adjudged by the sudder dewanny adawlut (in cases before them on the 27th September 1797, and 21st November 1798,) that if lands be claimed by a plaintiff as malgoozary, and be alleged in the defendant's answer to be lakheraj; or *vice versa*, if claimed as lakheraj and defended as malgoozary; and the judgment in either case be for the plaintiff; an appeal therefrom should be allowed to the defendant; if a valuation of the lands as lakheraj be such as to render the cause appealable. A plaintiff, whose claim to lakheraj land, of appealable value, may be dismissed, is also of course intitled to an appeal under the general rule stated, although the judgment against him should declare the land to be malgoozary. But a case wherein the original plaintiff (KALREFURSHAD NAG,) claimed lands, producing less than one hundred rupees per annum, as malgoozary, and his claim, decided in his favor by the zillah register, was dismissed on an appeal to the zillah judge, whose decree stated the land in dispute to be the lakheraj tenure of the original defendant, the provincial court rejected a further appeal, desired by the plaintiff, as not authorized by Section VIII, Regulation XLIX, 1793; and the sudder dewanny adawlut (on the 27th April 1803) confirmed the rejection of the appeal, under the limitations prescribed by that regulation. The difference between this case, in which the plaintiff was debarred from an appeal by his own statement of the cause of action, and that of a defendant pleading a malgoozary tenure in land adjudged to the plaintiff as lakheraj, is that, in the latter, an actual transfer of the property, as lakheraj, is made by the decree; whereas in the former a claim to malgoozary land only is dismissed; and no transfer of property is made by the decree. The application, in the cases stated, of the principle declared by the Regulations, may be more concisely, and perhaps more clearly, expressed as follows. When the claim is originally for lakheraj land, of appealable value, either party is intitled to appeal, according to the statement of the cause of action. But if the claim be for malgoozary land, not of appealable value, the plaintiff is barred from an appeal by his own statement of the cause of action; though the defendant, alleging the land to be lakheraj, is aggrieved by a decision against him to an appealable amount, (supposing a valuation of the land as lakheraj to render the case appealable) and has therefore a right of appeal.

the same time explained, by the two regulations last noticed, that although the original cause of action may have exceeded five thousand sicca rupees; if the decree of the provincial court be for an amount or value not exceeding that sum; viz. either adjudging against the party desiring to appeal money, or any description of property, to an amount or value not exceeding five thousand sicca rupees, or disallowing his claim to that amount or value only; the case is not appealable under the prescribed limitation; "the amount adjudged against the party desiring to appeal; or the amount of his claim disallowed by the decree from which he may desire to appeal, being the standard for determining his right to appeal; whether to the sudder dewanny adawlut from the decrees of the provincial courts of appeal; or to the provincial courts from the decisions of the zillah and city courts*."

The above explanation and limitation of appeals to the sudder dewanny adawlut have been since extended to the ceded provinces, by Regulations IV, and V, 1803; and are now in general

Explanation to determine the right of appeal when part only of the original claim, may be adjudged, or disallowed

R. IV, 1803, § XXX.
R. V, 1803, § X.
Ceded Provinces.

* The same explanation was applicable to appeals from the decisions of the zillah and city registers, before an appeal from them to the judge was allowed, in all cases, by Regulation XLIX, 1803. It has been further declared by the court of sudder dewanny adawlut (in a case before it on the 7th November 1798) that any interest (and of course any other mesne profit) adjudged or disallowed by the decree appealed against, should form part of the amount upon which the institution fee is to be calculated in cases of appeal; and consequently should be included in determining the right of appeal according to the prescribed standard. But that costs of suit, which do not form part of the claim at issue between the parties, and arise from payments to government, or to the pleaders in the cause, should not be included, either in the calculation of fees, or of the standard for appeals. In a case wherein two judgments had been given by a provincial court, one for the principal amount of a bond, the other for the interest; and each exceeding five thousand rupees; the sudder dewanny adawlut (on the 28th June 1798) declared two appeals to be necessary, as the two judgments had been given in separate suits. In another case before the court, on the 5th November 1802, wherein an appellant, (BUNJUN SING) claimed a right of appeal from a judgment passed against him for rupees two thousand six hundred and fifty seven, the rent for two years, of some villages, adjudged to be included in the lease of his under-farmer; on the plea that his lease to the under-farmer being for four years, he should ultimately have to pay double the amount adjudged, which would exceed five thousand rupees; the sudder dewanny adawlut suspended their admission of the appeal, until a second judgment should be passed against him for the remaining period of the lease. When however the decree of a provincial court, by invalidating a deed for more than five thousand rupees, or otherwise, has clearly appeared to involve a judgment against the appellant for an appealable amount, or value; although the sum, or property, specifically included in the decree, be less than five thousand rupees; the court have considered it within the spirit and intention of the regulations to admit an appeal.

force,

R. II, 1801, §
VIII.
R. V, 1803, §
X.
R. XLIX, 1803,
§ XXVI.

Appeal open to
sudder dewan-
ny adawlut in
all cases of de-
fault, whatever
may be the a-
mount or value.

R. II, 1805, §
X.

That court also
empowered to
admit a special
appeal, in cases
not regularly
appealable.

fore, with the following modifications. " In all cases wherein
" an appeal may lie, under the existing regulations, to a pro-
" vincial court of appeal, from the decision of a zillah or city
" court, and in which the provincial court may have refused
" to admit the appeal, on the ground of delay, informality, or
" other default in preferring it; or after having admitted the
" appeal, may dismiss it on the ground of some default, with-
" out investigation of the merits of the case;" it is competent
to the sudder dewanny adawlut to receive an appeal, whate-
ver may be the amount or value at issue in the cause; and if
it shall appear, on examination of the proceedings of the pro-
vincial court, that the appeal was rejected or dismissed by the
latter on insufficient grounds, it may order the provincial court
to receive the appeal, or to revive it if received and dismissed,
and to try and determine its merits, according to the regu-
lations*. The power of admitting a special appeal, in all ca-
ses not regularly appealable, (if on the face of the decree, or
from any information before the court, it shall appear errone-
ous or unjust, or from the nature of the cause, as stated in the
decree, or otherwise, it shall appear of sufficient importance
to merit a further investigation in appeal) which by Regulation
XLIX, 1803, was vested in the provincial courts of appeal,
has also been extended, by Regulation II, 1805, to the sudder
dewanny adawlut, under the same restrictions, in the exercise
of such discretionary authority, as were prescribed for the
provincial courts.

R. VI, 1793,
§ VII.
R. V, 1803, §
VII.
Rules for re-
ceiving, trying,

The whole of the rules enacted for the guidance of those
courts, in receiving, trying, and deciding appeals, including

* On the 10th May 1798, the sudder dewanny adawlut passed a rule of court, that appeals from dismissals of the provincial courts on default, be brought forward as soon as the pleadings may be completed; that if the dismissal be set aside, no time may be lost in referring the cause back to the provincial court, to be tried and decided upon the merits of it. The court also resolved, on the 14th November 1798, that appeals relative to demands of rent or revenue, such as are described in Section XXII, Regulation III, 1794, should, in pursuance of the spirit of that section, be brought on for decision, whenever the pleadings are filed, without regard to the regular order of trial.

the observance of the rules, prescribed for the trial and decision of suits, in the zillah and city courts, (as far as the same can be applied) are also equally applicable to, and obligatory upon, the fudder dewanny adawlut *. It will therefore be

and deciding appeals in provincial courts, and for trial and decision of suits in zillah and city courts, applicable to fudder dewanny

* This is expressly provided by Regulations VI, 1793, and V, 1803. And it was declared by the court in a case decided on the 26th October 1796. (Rajah MOHUMMUD ZUMAN KHAN, versus Mr. ROGER GALE,) that "the regulations for the administration of justice in the courts of dewanny adawlut, passed on the 5th July 1781, and 27th June 1787, having been equally obligatory on the court of fudder dewanny adawlut, as on the courts of musfil dewanny adawlut, the former court was not authorized to grant any dispensation or exemption from the provisions of those regulations, either in their own court, or in any of the musfil courts." The stated mode of proceeding on appeals to the provincial courts, when preferred through the zillah and city courts, is also observable (*mutatis mutandis*) by the provincial courts, when appeals are preferred through them to the court of fudder dewanny adawlut. On the 27th April 1796, the provincial courts were directed, in transmitting appeals to the fudder dewanny adawlut, to report whether the appellant has paid the institution fee, and given security for eventual costs, and the fees of his pleader, as required by the regulations. Also whether the decree appealed from has been carried into execution, or otherwise. On the 19th April 1798, they were further instructed to transmit a copy of the decree to which the petition of appeal may relate; and if it do not clearly specify the produce, amount or value, of the property adjudged, to add any information on this head which may have been recorded on their proceedings, or those of the zillah and city courts; so as to enable the fudder dewanny adawlut to judge and determine whether the appeal to them be admissible under the regulations. For the same purpose, the provincial courts were directed to be careful to note the exact date on which the petition of appeal may be received by them; and if the appeal shall not have been regularly preferred within the prescribed period of three months, to require from the appellant a statement of the reasons for his delay; and transmit a copy thereof to the court of fudder dewanny adawlut with the petition of appeal. They were further required to transmit all petitions for appeals to the fudder dewanny adawlut as soon after the receipt of them, as may be practicable, consistently with due observance of the foregoing instructions. A provincial court having admitted an appeal to the fudder dewanny adawlut, which was preferred after the limited period, it was advised by the latter court, (on the 29th March 1798,) that it had exceeded its authority in such admission; and the same principle is applicable to appeals to the provincial courts, which cannot be admitted by the zillah or city courts, unless regularly preferred within the time prescribed by the regulations. It may be further noticed, that a provincial court having declined to suspend, during an appeal to the fudder dewanny adawlut, the execution of a decree reversing the judgment of a zillah court in favor of the original plaintiff, which had been executed in consequence of the original defendant's not giving the prescribed security; the provincial court being of opinion that Section II, Regulation XIII, 1796, was not meant to maintain possession so obtained, after a reversal of the original judgment; the fudder dewanny adawlut, on the 9th August 1803, determined that, under the terms of that regulation, the appellant was entitled to hold possession of the property adjudged and delivered to him by the zillah court, on his giving the security required for suspending the execution of decrees appealed from, until a final decision should be passed upon his appeal. In another case, wherein the appellant died after his appeal to the fudder dewanny adawlut had been admitted, and the right of inheritance to his estate was disputed between the respondent and others, the court (August 9th 1798) suspended all proceedings on the appeal, till it should be revived by the legal heir, after a determination upon the right of succession by a separate suit in the zillah court.

sufficient,

adawlut, and
equally obliga-
tory upon that
court.

sufficient, in addition to what has been stated, relative to the provincial, zillah, and city courts, and the appeals cognizable by the fudder dewanny adawlut, to specify the constitution, powers, and general duties of that court, as now subsisting under Regulation II, 1801.

Preamble to R.
II, 1801.

~~Regulations al-~~
~~tering the con-~~
stitution of the
fudder dewan-
ny adawlut, and
appointing
judges, not
members of the
executive go-
vernment.

NOTWITHSTANDING the limitations of appeals to the fudder dewanny adawlut, made by Regulations XII, 1797, and V, 1798, the number of undecided causes was found to accumulate, by reason of the various public duties of the Governor General and Members of the Supreme Council, which occasioned unavoidable delays in the proceedings of that court; and of the nizamat adawlut, or superior court of criminal jurisdiction, which was also composed of the Governor General in Council; assisted by the law officers, and ministerial officers, before mentioned. It was at the same time, deemed essential by MARQUESS WELLESLEY "to the impartial, "prompt, and efficient administration of justice, and "to the permanent security of the persons and properties "of the native inhabitants of these provinces, that the Go- "vernor General in Council, exercising the supreme legisla- "tive and executive authority of the State, should adminis- "ter the judicial functions of the Government, by the means "of courts of justice distinct from the legislative and execu- "tive authority." It was therefore enacted by Regulation II, 1801, (with a similar provision for the nizamat adawlut) that "the court of fudder dewanny adawlut shall henceforth consist of three judges; to be denominated respectively, chief judge, second judge, and third judge, of the fudder dewanny adawlut. The said chief judge shall not be the Governor General, nor the Commander in Chief, but shall be one of the Members of the Supreme Council, to be selected and appointed by the Governor General in Council; and the said second and third judges shall be selected and appointed by the Governor General in Council from among the cove-

R. II, 1801,
§. III.

Rule for ap-
pointment of
three judges,
to compose the
court.

nanted

nanted Civil Servants of the Company not being Members of the Supreme Council. It is further enacted by the above Regulation, that the chief judge, and each of the puisne judges, appointed to the court of sudder dewanny adawlut, shall, previously to entering upon the execution of the duties of his office, take and subscribe before the Governor General in Council the same oath as is required to be taken and subscribed by the judges of the provincial courts of appeal. That the sudder dewanny adawlut be an open court, to be held (as directed in Section III, Regulation VI, 1793,) in a large convenient room, at Calcutta. That two judges shall be necessary to hold a court; and that no decree or final order of the court shall be valid unless passed by two judges present. In the event of a difference of opinion when the three judges are present, the voices of the majority are to determine the question; but if a difference of opinion arise when two judges only are present, the question before the court is to be postponed for adjudication until the third judge (who is to be advised of the case by the register) shall attend. The ordinary sittings of the court are required to be holden on three fixed days in each week; and special sittings, when necessary, are to be summoned by the register, on his receiving orders for that purpose from the chief judge; or, during the absence or indisposition of the chief judge, from the senior judge at the presidency. The chief judge, or any judge of the court to whom the duty may be delegated, is declared competent to receive petitions of appeal, or any other petitions receivable by the sudder dewanny adawlut; and to proceed thereupon as the regulations authorize and direct; so that all such petitions be received in open court; and that no decision, or final order, be passed thereupon, otherwise than in the presence of two judges; nor any order which may be repugnant to a previous decree or order of the court. Any one, or more, of the judges of the sudder dewanny adawlut, may also take the depositions of witnesses, in open

R. II, 1301,
§ IV to VI.
Oath of office
to be taken by
the judges.

Court to be
open, and
where held.

General rules
for sittings of
the court, and
its proceedings.

open court; instead of causing the same to be taken by the regisler; in cases where this mode of examination may be judged advisable; and, generally, the judges of that court are authorized to regulate the mode and order of their proceedings; as well as the execution of their process; subject to the rules prescribed by the regulations.

R. VI, 1793, § XIII.
R. V, 1803, § XIII.
Process to parties, witnesses, or others, and all judicial orders of the court, in what language and manner to be issued.

ALL process to parties and witnesses, and every rule or order for the execution of a decree, or relative to any cause or matter depending before the court, is however, as in the provincial courts, to be written or printed in the Persian and Bengal languages, for Bengal and Orissa; and in the Persian and Hindoostanee languages for the other provinces; to be sealed with the seal of the court; and signed by the regisler. All such process, rules, and orders, to be served or executed on any parties, witnesses, or other persons, not being in actual attendance on the court, are to be directed to the provincial court of the division; or if judged expedient, for expedition or any other purpose, to the judge of the zillah or city, in which the cause may have originated, or in whose jurisdiction the disputed lands may be situated, or the parties may reside. If any provincial, zillah, or city court, to whom any such process, rule, or order may be directed, shall wilfully disobey, or neglect to perform, the commands contained in it, or make a false return; the judges, who may commit such offence, are liable to be suspended from their offices by the sudder dewanny adawlut; who are to notify the suspension to the Governor General in Council, within ten days after it shall take place; together with the cause of it; and to certify, under the seal of the court, the proceedings, depositions, exhibits, and all other relative papers, which may be necessary to enable the Governor General in Council to pass a determination upon the case. For resistance to any process, rule, order, or decree of the sudder dewanny adawlut, by any landholder, farmer, or other person, the same penalties are prescribed

Powers of the court in cases of wilful disobedience or neglect, or of a false return.

R. VI, 1793, § XXIV, to XXVII.
R. V, 1803, § XXIV, to XXVII.

prescribed as have been already stated for resistance to the process of a provincial, zillah, or city court.* If any person shall charge the judge of a zillah or city court, or any judge of a provincial court of appeal, before the sudder dewanny adawlut, with having been guilty of corruption in opposition to his oath, the court are to receive the charge; provided the complainant shall previously make oath to the truth of it (or subscribe the required declaration if he be of the description of persons whom the court are empowered to exempt from taking an oath) and give security, in whatever sum the court may judge proper, to appear and prosecute the charge when required. Upon the receipt of any such charge, preferred on oath, or under the prescribed declaration, and with the required security, (as well as upon a charge of corruption, so preferred against the judge of any zillah or city court to a provincial court of appeal, being transmitted by the latter to the sudder dewanny adawlut) that court, on consideration of the circumstances of the case, may either direct the parties to proceed to Calcutta, that the charge may be tried before the sudder dewanny adawlut; or, if the person accused be a zillah or city judge, may order the charge to be tried by the provincial court of the division; or if the party be a judge of a provincial court, may grant a special commission to three or more of the judges of the other provincial courts to assemble and try the charge; or, in any of the cases mentioned, may recommend to the Governor General in Council, to order that the person accused be prosecuted in the supreme court of judicature by the law officers of government, under the pro-

Penalties for resistance of process.
R. VI, 1793, § VIII
R. V, 1803, § VIII.
Court how to proceed, on charges of corruption against a provincial, zillah, or city judge.

* It may be proper to notice however, that in a case of resistance of civil process, referred to the sudder dewanny adawlut, in May 1799, the judge of zillah Shahabad was informed by that court, that they did not consider, Section XXII, Regulation IV, 1793, to authorize or intend, a sequestration of the offenders lands, until the judgment of forfeiture be confirmed by the Governor General in Council. The terms of the rule indeed clearly express this, as they direct that "in the event of the Governor General in Council ordering the decree to be executed, the court is to issue a precept, requiring the collector of the zillah to depute an ameen to sequester the lands, and collect the rents and revenues." Section XXIV, of the same regulation, is likewise of similar tenor, respecting judgments for cancelling the leases of farmers who may resist the process of the civil courts.

Judges convicted of corruption are declared liable to removal from office, and suspension from the service.

If accused judge in their acquiescence in the charge

any individual may also prefer charge of corruption in the supreme court.

R II 1805, § VII

R V 1809, § XXXVIII

Rule to be observed, in cases of negligence or misconduct, in the discharge of official duty, not expressly provided for by the regulations.

visions made by Act of Parliament for such cases. It is further declared that if the charge be established, the Governor General in Council will remove the judge convicted of corruption from his office; and suspend him from the Honorable Company's Service, or pass such other order as may appear proper. That, if the charge be not proved, the judge so accused, will be at liberty to sue his accuser for damages, in any court of judicature to which he may be amenable. And that the rule thus established, for receiving and trying charges of corruption against the judges of the zillah, city, and provincial courts, are not to be construed to prevent any individual, who may have to prefer a charge of this description, from prosecuting it in the supreme court of judicature in the first instance. The rules prescribed for receiving and trying charges of corruption or extortion, against the ministerial officers of the courts of justice, will be hereafter mentioned, with the regulations concerning the appointment and duties of such officers. Any negligence or misconduct, in the discharge of official duty, not expressly provided for by the regulations, is to be reported to the court of sudder dewanny adawlut; who after such enquiry as shall be judged necessary, in proof or explanation of the circumstances stated, are to report the case to the Governor General in Council, if it appear to require his notice or orders; with a copy of all proceedings and papers received on the subject of it. "The court of sudder dewanny adawlut" is directed to report to the Governor General in Council "all instances of wilful neglect of duty, or aggravated misconduct, by a covenanted servant of the Company employed in any of the civil courts, whether in a judicial or ministerial capacity; and whether such neglect or misconduct may have been reported by a provincial, zillah or city court; or may otherwise appear from the proceedings and papers before the court. But if the case should appear to involve an error of judgment only; or a slight default, for which an admonition from the court may be deemed a sufficient

“ ficient correction; the court of fudder dewanny adawlut, in
 “ the former case, is authorized to notice the error for the infor-
 “ mation and guidance of the party who may have committed
 “ it; or, in the latter case, to advise him of his default and
 “ admonish him accordingly.”

THE court of fudder dewanny adawlut are further empow-
 ered to receive any original suit or complaint, which may be
 cognizable in any zillah or city court; or any appeal from
 the decision of a zillah or city court, which may be cogni-
 zable in any provincial court of appeal; and provided proof
 be made to their satisfaction, that the zillah or city judge re-
 fused or omitted to receive, or proceed in, such original suit
 or complaint; that the complainant applied to the provincial
 court of the division; and that such court omitted or refused
 to command the judge to receive or proceed in it; or in the
 case of an appeal, that the provincial court omitted or refu-
 sed to receive or proceed in it; may command the zillah or
 city judge to receive such original suit or complaint, and pro-
 ceed to hear and determine it; or may command the provin-
 cial court to receive, hear, and determine the appeal. The
 court are also vested with authority to receive any petitions
 respecting suits or matters, which may be depending or have
 been decided, in any zillah or city court; as well as any
 petitions respecting appeals or matters that may be depend-
 ing, or have been decided, in any provincial court of appeal;
 and provided it be proved to their satisfaction, that the
 petition, if relative to any matter depending before, or de-
 cided by, a zillah or city court, was presented to the judge
 of such court; and that he refused or omitted to receive and
 proceed on it; and that the complainant applied to the
 provincial court of the division; and such court omitted or
 refused to grant a precept to the zillah or city judge, as
 directed in such cases by the regulations; or, if the petition
 relate to a matter depending before, or decided by, a provin-
 cial

R VI, 1793, § IV, and V.
 R II, 1798, § V, VII and VIII.
 R V, 1803, § IV, and V.
 In what case the fudder dewanny adawlut may receive original suits cognizable by the zillah and city courts, or appeals cognizable by the provincial courts, and how to proceed thereupon.

In what cases the court may also receive petitions respecting matters depending before, or decided by the provincial, zillah, or city courts, and how to proceed thereon.

cial court, that it was presented to such court; and that they refused or omitted to receive and proceed upon it; may issue a precept, under the seal of the court and attested by the register, commanding the zillah or city judge, or the provincial court of appeal, (as the case may relate to either) to receive the petition; and to proceed respecting it according to the regulations.

Object of foregoing provisions.

Powers vested in fudder dewanny adawlut and provincial courts sufficient to correct errors or defects in all appealable cases.

But a qualified power of revision necessary in cases not appealable.

THE foregoing provisions have in view the certain receipt of all suits, appeals, and petitions of whatever nature, relative to matters cognizable by the established courts of civil justice; and the regular proceeding of the proper courts thereupon, in such manner as the regulations prescribe. The court of fudder dewanny adawlut being also empowered, in common with the provincial courts of appeal, to receive further evidence in every case wherein it may appear necessary for the just determination of the cause in appeal; or to refer it back for further trial and decision to the court in which the appeal may have originated, with special directions for receiving any requisite new evidence; as may be deemed most conducive to justice, and the convenience of the parties and witnesses; any errors or defects in the trial, or decision, may, in all appealable cases, be remedied by the prescribed course of appeal. But as the civil courts are not authorized by the regulations to revise their own proceedings, after judgment has been passed by them; and the exercise of an unqualified power of revision, in decided cases, would tend to depreciate the value of property held under the decrees of the courts of judicature; whilst, at the same time, particular cases may occur, in which it would be proper that the civil courts should have a power of revising their proceedings, for the purpose of correcting incidental errors, not affecting the principle of the decision; or for amending a judgment appearing to be erroneous, either on the face of the decree, or from the discovery of new matter or evidence, which could not be had, or used, at the time the decree was passed

passed, it was necessary to provide for an occasional review of the proceedings held, and decisions passed, in such cases; when not open to appeal. And that the grounds for granting a revision, in all instances appearing to call for it, might be uniform; as well as that it might not be allowed, in any instance, without due deliberation and circumspection; it was judged expedient to lodge the exclusive power of authorizing the review of a final judgment, which under the prescribed limitations may not be open to a regular appeal, with the court of fudder dewanny adawlut. The following provisions were accordingly enacted by Regulation II, 1798; and have been since extended to the ceded provinces.

Reasons for
lodging this
power with the
fudder dewanny
adawlut
only.

“ ANY persons considering themselves aggrieved by the
“ decree of a zillah, city, or provincial court, from which
“ decree no appeal can be had under the existing regulations
“ to any superior court; and who, from the discovery of
“ new matter or evidence, which was not within their know-
“ ledge, or could not be adduced by them, at the time when
“ the decree was passed, or for other good and sufficient
“ reason, may be desirous of obtaining a review of the judgment
“ passed against them, are at liberty to present a petition for
“ this purpose (on stamp paper) to the court in which the
“ decree in question may have been passed; and, if the judge
“ or judges of such court, shall, on consideration of the
“ reasons urged by the party, be of opinion that the review
“ desired is necessary to correct an evident error in the judg-
“ ment, or otherwise for the due administration of justice, they
“ shall report the same, with the grounds of such opinion, to
“ the court of fudder dewanny adawlut; transmitting at the
“ same time a copy and translation of the petition presented
“ to them; and shall be guided by the instructions they may
“ receive from that court in admitting or rejecting the prayer
“ of such petition; as well as in the admission of evidence,
“ If the review be granted, on the further proceedings to be
“ held

R. II, 1792,
§ II, and III.
R. II, 1803,
§ XXII.
R. IV, 1803,
§ XXX.
R. V, 1803,
§ XXXVII.
Provisions made
for granting a
review, in cases
not appealable,
which may
appear to re-
quire “.

“ held by them in consequence. Provided however, that no
 “ reference to the fudder dewanny adawlut shall be considered
 “ necessary in cases wherein the judge, or judges, of the court
 “ in which the final decree may have been passed, shall deem
 “ the reasons urged for a revision thereof insufficient; their
 “ rejection of the petition for a review in all such cases being
 “ hereby declared conclusive. The court of fudder dewan-
 “ ny adawlut, in cases referred to them by the provincial,
 “ zillah, and city courts, as well as in all cases wherein peti-
 “ tions may be preferred to them for a revision of their own
 “ judgments, not open to an appeal to the King in Council,
 “ are authorized to grant the review desired; if, on due con-
 “ sideration of the reasons urged for the same, the circumstances
 “ of the case appear in justice to require it; such, for instance,
 “ as an error in judgment appearing on the face of the decree;
 “ or the discovery of new matter or evidence which could
 “ not be had or used at the time when the decree was passed;
 “ but no new evidence or matter, then in the knowledge of
 “ the parties, which might have been used before, shall be a
 “ sufficient ground for granting a review, unless for special
 “ reasons the court of fudder dewanny adawlut should see
 “ just cause to admit the same; in which case such reasons are
 “ to be recorded at large in their proceedings. The above
 “ court are further authorized, whenever they may judge
 “ it proper to grant a review, to direct the admission or re-
 “ jection of any new evidence that may be offered; as well
 “ as generally to pass such orders upon the case as they may
 “ deem just and equitable; and all orders so passed by them
 “ (except in cases appealable to His Majesty in Council) shall
 “ be decisive and final.”

R. VI, 1793,
 § IX.
 Sudder dewan-
 ny adawlut em-
 powered to ad-
 mit appeals from
 decisions passed,
 before the es-
 tablishment of

IN addition to the appeals which have been noticed, from
 the provincial courts established on the 1st May 1793, the
 court of fudder dewanny adawlut were empowered, by
 Regulation VI, 1793, to hear and determine appeals from
 decisions

decisions, passed by the provincial councils, or any members of a provincial council or committee, as a court of appeal, on or before the 6th April 1781; or by the committee or board of revenue, between the 6th April 1781, and the 1st May 1793, either in suits tried and decided by them in the first instance, or in appeal from decisions of the collectors, or any other officers entrusted with the collection of the revenue. The court were also empowered, by Regulation V, 1803, to hear and determine appeals from decisions passed by the board of commissioners, in the ceded provinces, before the institution of the Bareilly provincial court. In the cases abovementioned, as in all other cases where in an appeal is authorized to the sudder dewanny adawlut, the court are declared at liberty to confirm or reverse, in whole or in part, the decrees appealed from; and "to make such further order on all such decrees, as justice, equity, and good conscience may require;" as well as to award to either party such costs as they may deem reasonable. But the court were directed to exercise with caution the power vested in them of admitting appeals, from the decisions referred to, after the time limited for preferring them; lest all property held under such decisions should be deemed insecure, from being considered liable to be again contested. For the same reason, the provincial courts were enjoined, by Regulation V, 1794, to exercise with caution the power vested in them of admitting appeals, after the limited period, from decrees of the mofussil dewanny adawluts, passed antecedently to the year 1793; and both the provincial courts and sudder dewanny adawlut were restricted by that regulation from the future admission of appeals against any judgments of the former courts of justice which were final under the regulation in force at the time of their being passed.

the present provincial courts, by the provincial councils, or by the committee or board of revenue.

R. V, 1803, Also from decisions of commissioners in ceded provinces.

And to confirm, reverse, or alter, the decree appealed from, as in all cases of authorized appeals.

But appeals to be admitted, with caution, after the time limited for preferring them.

R. V, 1794, Similar caution to provincial courts. And restriction against appeals from final judgments passed by former courts.

THE late renewal of war between Great Britain, France and Holland, rendering it uncertain how long the settlements

of

of Chandernagore and Chinsurah may remain under the authority of the British government; and the Governor General in Council being desirous that the inhabitants of those settlements, whilst they continue under British protection, should, as far as circumstances admit, enjoy the benefit of the same provisions, as have been made for administering the judicial functions of the government throughout the Company's provinces, by the means of courts of justice distinct from the legislative and executive authority of the State; the court of fudder dewanny adawlut have been recently empowered (by Regulation I, 1805) to hear and determine appeals from the decisions of the European courts at Chandernagore and Chinsurah; in all civil suits instituted, heard, and determined, in those courts, in the first instance; as well as a further appeal, in causes originally tried in the cucherry, or native court, and heard in appeal by the superintendent of Chandernagore, or commissioner at Chinsurah, in his judicial capacity; under a limitation, in such cases, similar to that which restricts the right of appeal to the fudder dewanny adawlut from the decrees of the provincial courts of appeal. The rules enacted for this purpose, and to remain in force whilst the settlements of Chandernagore and Chinsurah shall continue under the British government, are contained in the regulation referred to; which relating exclusively to those settlements, and being also of temporary duration only, a detail of it in this analysis does not appear necessary. It will be sufficient to notice, that it is adapted to the local circumstances of the captured French and Dutch settlements for which it has been enacted; that it is provided "the laws and usages, which govern the decisions of the courts of justice, established at Chandernagore and Chinsurah, shall also govern the decisions of the court of fudder dewanny adawlut in all appeals under this regulation." And that "the regulations which have been enacted, or which may be hereafter enacted, for the general administration of civil justice, ..

R. I, 1805.
Fudder dewanny adawlut authorized to receive appeals in certain cases, from the decisions of the superintendent of Chandernagore, and commissioner at Chinsurah.

What laws and usages govern the determination of the fudder dewanny adawlut upon such appeals. And how far the general regulations are to be considered applicable thereto.

“ justice, in the British provinces under this presidency, particularly for the guidance of the sudder dewanny adawlut; “ shall not be considered applicable to the appeals intended to “ be provided for by this regulation; except as far as they “ may be fully consistent with the provisions contained in it; “ and may be in all respects applicable to such appeals.” In cases not affecting the rights of parties however; and particularly as far as respects the power and authority of the sudder dewanny adawlut over the provincial, zillah, and city courts, “ the principles of the general regulations in “ force are declared applicable to the courts of civil justice “ established at Chandernagore and Chinsurah;” under the superintendent of the former, and commissioner at the latter settlement, in his capacity of judge of those courts; who is required “ to conform to all process, rules, and orders which “ may be addressed to him, under the seal of the sudder “ dewanny adawlut, and the signature of the register; and “ to perform the exigency thereof within the time limited, or “ to certify good and sufficient reason why the same had not “ been carried into execution as required.”

And to the authority of the sudder dewanny adawlut over the judge of the courts at Chinsurah and Chandernagore.

THE judgments of the court of sudder dewanny adawlut are final and conclusive, in all appeals heard and determined by that court, under the regulation last mentioned, as well as under the general regulations before noticed, within the limitation prescribed by the Statute 21, GEORGE III, Chapter 70, Section 21; viz. five thousand pounds; or, at the medium rate of exchange, fifty thousand current rupees. If the amount or value adjudged, (to be computed according to the general rules prescribed for determining the value of the same property, when constituting the cause of action in the sudder dewanny adawlut, and civil courts subordinate thereto,) be five thousand pounds; or current rupees fifty thousand; (being, exclusive of fractions, sicca rupees forty three thousand one hundred and three;) an appeal lies to His Majesty in Privy

R. XVI, 1797,
R. V, 1803,
§ XXXI, to
XXXVI.
R. I, 1805,
§ XIII.
In what cases
an appeal lies
from the judgments
of the
sudder dewanny
adawlut to the
King in Council.

Necessity of
rules for receiv-
ing and for-
warding such
appeals.

Privy Council, in conformity with the statute above quoted, and the regulations framed in pursuance of it. But no rules having been prescribed by the statute respecting the admission of the appeals thereby authorized; and it being necessary to establish such, as well for the information of the parties who might be desirous to appeal from decrees of the sudder dewanny adawlut; as for the guidance of that court in receiving and forwarding appeals presented to them: the Governor General in Council referred to the provisions made for appeals to the King in Council under His Majesty's charter for erecting the supreme court of judicature at Calcutta; as well as to the rules and orders framed by the supreme court, and approved by His Majesty in Council; and established the following rules, for appeals to the King in Council, from decisions passed by the court of sudder dewanny adawlut, to be in force until His Majesty's pleasure be known thereupon.

Rules establish-
ed for those
purposes.

Petition of ap-
peal required to
be presented
within six
months.

Court may exe-
cute, or suspend
execution of,
the judgment
appealed from,
taking sufficient
security.

Security to be
so given by

“ ALL persons desirous of appealing from a judgment of the
“ court of sudder dewanny adawlut, to the King in Council,
“ are required to present their petition of appeal to the sudder
“ dewanny adawlut, either themselves, or through one of the
“ authorized pleaders of that court, duly empowered to pre-
“ sent such petition in their behalf, within six calendar months
“ from the date on which the judgment appealed against
“ may have been passed. In cases of appeal to His Majesty
“ in Council, the court of sudder dewanny adawlut may
“ either order the judgment passed by them to be carried into
“ execution, taking sufficient security from the party, in whose
“ favor the same may be passed, for the due performance of
“ such order or decree as His Majesty, his heirs or successors,
“ shall think fit to make on the appeal; or to suspend the
“ execution of their judgment during the appeal, taking the
“ like security, in the latter case, from the party left in posses-
“ sion of the property adjudged against him; but in all cases
“ security is to be given by appellants, to the satisfaction of
“ the

“ the sudder dewanny adawlut for the payment of all such
 “ costs as the court may think likely to be incurred by the
 “ appeal ; as well as for the performance of such order and
 “ judgment as His Majesty, his heirs or successors, shall think
 “ fit to give thereupon.” After receiving such security, if
 the cause be appealable, and the petition of appeal shall have
 been presented within the prescribed period, the court of
 sudder dewanny adawlut are to declare the appeal admitted,
 and to give notice thereof to the appellant and respondent ;
 that they may take measures, the one to prosecute, the other
 to defend, the cause in appeal before His Majesty in Privy
 Council, according to the established mode of proceeding in
 similar cases.

Appellants for
 eventual costs.

Appeal when to
 be admitted ;
 and notice given
 to the parties.

It is at the same time provided by the regulations, which
 contain the above rules, that nothing therein shall be under-
 stood to bar the full and unqualified exercise of His Majesty's
 pleasure, upon all appeals to him from the decisions of the
 sudder dewanny adawlut, either in rejecting any he may con-
 sider inadmissible under the statute respecting such appeals ;
 or in receiving any he may judge admissible, notwithstanding
 the provisions made for the guidance of the sudder dewanny
 adawlut. It is further directed, that in all cases wherein that
 court may admit an appeal to the King in Council, they are
 to cause two exact copies to be made on stamp paper, at the
 expense of the appellant (paupers excepted) of all the pro-
 ceedings held, and judgments or orders given, in the case ap-
 pealed ; including the whole of the evidence and documents
 (with an English translation of all papers in any of the country
 languages) as well as a copy of, or extract from, any local re-
 gulation referred to in the judgments passed by any of the
 courts, wherein the cause appealed may have been tried and
 decided ; and are to transmit the same, as soon as prepared,
 under their official seal, and the signature of their register, to
 the Governor General in Council ; for the purpose of being
 forwarded,

Rules stated are
 subordinate to
 the full exercise
 of His Majesty's
 pleasure.

R. XVI, 1797,
 § V, and VI.
 R. VII, 1800,
 § XIX.
 R. II, 1801, §
 XVI.
 R. V, 1809, §
 XXXIV, and
 XXXV.
 Copies and
 translations of
 all proceedings
 and papers re-
 lative to appeal-
 ed cases to be
 transmitted to
 His Majesty in
 Council.

Parties also intitled to receive copies on paying the expense of making them upon stamp paper.

forwarded, by the first secure and separate conveyances, to His Majesty in Council. On the application of the appellant, or respondent, the register to the fudder dewanny adawlut is also to furnish them with one or more copies of the proceedings held, and judgments or orders passed, in the case appealed; provided they respectively agree to defray such expense as may be incurred in making the same upon stamp paper; but not otherwise*.

R. XIX, 1797, § IV, and V.
R. II, 1801, § XVII, to XIX.
R. IV, 1803, § XXXI, to XXXIII.
By whom translations of papers, in the country languages, are to be made; when required in appeals to the King in Council, or for any special purpose.

WHEN translations are required of the proceedings held in a zillah, city, or provincial court, or in the fudder dewanny adawlut, in consequence of an appeal to His Majesty in Council, or for any special purpose, it is the province of the registers and assistants to the several courts to make the translations required from them respectively. But if, at any time, their other official avocations should not admit of their making such translations with the requisite dispatch, the court of fudder dewanny adawlut are empowered to authorize the employment of any person or persons, possessing an adequate knowledge of the original language, to make the same; at the established rate of one sicca rupee for one hundred words of the original language; (or the same rate for figures, calculating five figures for a word) subject to the revision of the register to the provincial, zillah, or city court, from which such translation may be demandable; who, in such instances, is to countersign the translation; and is held responsible for the accuracy of it. The proceedings of the court of fudder dewanny adawlut (as well as of the nizamat adawlut) were formerly kept in the English language, and copied for transmission to the Governor General in Council, and the Honora-

* On the 3d May 1798, the court of fudder dewanny adawlut, with the advice of the advocate general, made a rule, that original documents shall not be returned during appeals to the King in Council; but that authenticated copies be delivered on application of the parties who exhibited them. The court also resolved, on the 11th April 1799; not to take or receive, further evidence offered in a cause appealed to the King in Council, without instructions for that purpose from His Majesty in Council.

ble Court of Directors. It was in consequence necessary, at that time, to require complete translations of the proceedings held upon all causes appealed to the sudder court. But under the new constitution of the court, made by Regulation II, 1801, the practice of keeping English proceedings, except as far as convenient for miscellaneous English correspondence, and conducive to regularity, was discontinued; and copies of the court's proceedings were not required to be furnished in future, except in cases of appeal to His Majesty in Council, or of reference to the Governor General in Council, as prescribed by the regulations. The office of translator to the courts of sudder dewanny adawlut (and nizamut adawlut) was therefore abolished; and the provincial, zillah, and city courts were exempted from the duty of sending translations, with papers in the native languages, except in cases wherein they might be required by the precepts of the sudder dewanny adawlut; or by any regulation or order expressly requiring the same. The saving of expense, time, and labor, in translating voluminous records, and in transcribing the translations when made, was not the only advantage which resulted from the alteration thus adopted in the proceedings of the superior civil and criminal courts. The original proceedings held before the zillah, city, and provincial courts are now read before the court of sudder dewanny adawlut, (as well as the proceedings of the courts of circuit upon criminal trials before the nizamut adawlut,) instead of the English translations which were formerly substituted; and must obviously bring before the judges a more accurate exhibition of the pleadings of the parties, as well as better evidence upon the merits of the case, than could, in general, have been obtained from a version of them in another language. It may be added, that, with a view to furnish the Honorable Court of Directors, and His Excellency the Governor General in Council, with the information before submitted to them in copies of the proceedings of the sudder dewanny adawlut, and nizamut adawlut, and in a form better calculated

R. II, 1801,
(XVI to XIX.
English proceedings of sudder dewanny adawlut and nizamut adawlut discontinued under the new constitution of those courts; and advantages which have resulted from it.

Report of civil judgments, and criminal sentences to be prepared, from commencement of 1805, for the information of government, and the Court of Directors.

to afford a ready knowledge of the judgments, and sentences, passed by those courts; it has been lately proposed by the courts, and approved by government, to prepare an annual report, from the commencement of the present year, of all civil causes adjudged by the sudder dewanny adawlut; and of all trials, on which sentence may be passed by the nizamat adawlut. A deputy register, and a second assistant, have been added to the establishment of the courts, for the purpose of preparing such reports; of which copies are to be transmitted to the Governor General in Council and Court of Directors; and it is intended that cases of importance shall be selected from them, by the judges, to be published, with the approbation of government, for general information. It cannot be necessary to enlarge upon the utility of this measure, as calculated to establish precedents, and to promote the uniform administration of justice, in cases not expressly provided for by the laws and regulations. Nor does it appear requisite to offer any comment, in addition to what has been quoted from the preamble to Regulation II, 1801, on the amended constitution of the principal civil and criminal courts, provided for by that regulation; which declares the provision thereby made, for the more effectual dispatch of the proceedings of the courts of sudder dewanny adawlut and nizamat adawlut, and for more distinctly separating the exercise of the judicial functions of the government from the legislative and executive authority, "important to the honor and stability of the British government; and to the happiness and prosperity of the native subjects of these provinces." *

And cases of importance to be selected from such reports for publication.

Concluding remark on amended constitution of the principal civil and criminal courts.

It

* Since the foregoing report was written, a regulation has been passed for the more complete attainment of the two important objects stated, by constituting the courts of sudder dewanny adawlut and nizamat adawlut to consist of three judges, neither of whom shall be a member of the Supreme Council. Independently of the fundamental objections to a member of the executive government presiding as chief judge in those courts, which are set forth in the regulation recently enacted, the provision made by it had become absolutely necessary, from the extended jurisdiction of the courts over the ceded and conquered provinces, and the consequent augmentation of business, which required more frequent sittings than could be held by two judges, the presence of both of whom was indispensable to form a competent court. The addition of

It remains to notice, in the present section, such general provisions, relative to the whole of the civil courts, as have not been specified in treating of them respectively.

Further general provisions relative to the civil courts.

To save the necessity of the personal attendance of suitors in the courts of civil judicature, and to obtain for them, in pleading their causes, the assistance of men of character and education, versed in the Mahomedan, or Hindoo law, as well as in the regulations of the British government, provision is made, by the regulations noted in the margin, for the appointment of vakeels, or native pleaders, in the zillah and city courts, the provincial courts of appeal, and the sudder dewanny adawlut; under rules and restrictions, calculated to secure to their clients a diligent and faithful discharge of their trust. The preamble to Regulation VII, 1793, sets forth, at length, the general disqualifications of the persons before employed, occasionally or professionally, as pleaders; who by their ignorance of the laws and regulations, and imperfect knowledge of judicial proceedings, as well as from their being liable to collusion and intrigue with the ministerial officers of the courts, impeded and prevented, instead of aiding and promoting, the speedy and impartial administration of justice. The people, in general, are at the same time necessarily precluded, by their pursuits and occupations in life, from attending the courts of justice; or acquiring a sufficient knowledge of the laws and regulations to enable them to plead their own causes. It was therefore indispensably necessary that the pleading of causes should be made a distinct profession; that none but persons duly qualified should be admitted to plead in the courts of judicature; and that, with a view to induce men of education and character to undertake the

R. VII, 1793. ✓
R. XIII, 1795.
R. VIII, 1796.
R. VIII, 1797.
§ IV, and V.
R. V, 1798,
§ IX to XV.
R. III, 1802,
§ III,
R. X, 1803.
R. XLIX, 1803,
§ XXVI.
Reasons for the appointment of native pleaders in the several courts; and objects of the rules concerning them.

a third judge, who can devote the whole of his time to the administration of justice, civil and criminal, (which, it is manifest, no member of the government could do,) will admit of a daily sitting, either of the sudder dewanny or nizamat adawlut; and by the entire separation of the judicial authority vested in these courts, from the executive and legislative authorities of the State, MARQUESS WELLINGTON has put the key-stone to the fabric of policy and justice, the constitution of British India, of which the foundations were laid by MARQUESS CORNWALLIS.

official

office of pleader, to prevent their being deterred from pleading the causes of their clients with becoming freedom, and to ensure integrity and fidelity in the execution of their duties, their appointments should be secured to them as long as they conform to the regulations prescribed for their guidance; and they should be entitled to receive a fixed and liberal compensation, proportionate to the amount or value of the cause of action in the suits wherein they might be employed. It is impossible to detail, in this place, the whole of the rules which have been enacted for the above purposes; and it will be enough to notice the principal of them.

Substance of
the principal
rules respecting
pleaders.

By whom to be
appointed and
removed.

From what de-
scription of per-
sons to be selec-
ted.

Oath to be ta-
ken and sub-
scribed by
them.

THE pleaders are appointed by sunnuds, or patents, from the sudder dewanny adawlut; and are not removable from their offices, except for incapacity or misconduct in the discharge of their public duty; or for gross profligacy or misbehaviour in their private conduct; proved to the satisfaction of that court. They are to be selected from amongst the students in the Mahomedan college at Calcutta, and the Hindoo college at Benares; or, if these colleges shall not furnish a sufficient number of qualified persons, the sudder dewanny adawlut may admit any other Mahomedans or Hindoos, after ascertaining that they are men of good character and liberal education; giving a preference to persons of this description who have been bred to the study of the Hindoo or Mahomedan law*. Previously to being allowed to practice, they are required to take and subscribe an oath, that they will truly and faithfully execute the duties of pleaders to the best of their knowledge and judgment; and in consequence of the greater obligation of a retrospective oath in the belief, and upon the conscience, of Mahomedans, pleaders of the

* The provincial, zillah, and city courts, were instructed by the sudder dewanny adawlut, on the 29th November 1803, to be careful, in proposing persons for the office of pleader, to report their qualifications; and the situations in which they may have been previously employed. They were also desired, (on the 13th December 1799,) with a view to prevent mistakes in drawing out the sunnuds for native pleaders, whenever they might have occasion to propose any new pleaders, to cause their names to be written in Persian, as well as English.

Mosulman faith are directed to be sworn half yearly to the actual execution of their duties with truth and fidelity *. That the pleaders, as well as all other persons, may have it in their power to render themselves acquainted with the regulations enacted by the British government, printed copies and translations of them are ordered to be kept, for public inspection, upon a table expressly allotted for that purpose, in some part of every court room, where all persons may refer to them, or take copies of them.

Printed copies and translations of the regulations to be open for their inspection, and that of all other persons.

UPON a pleader's agreeing to undertake the prosecution, or defence, of a suit, the party entertaining him is to present him with four annas as a retainer; and is to execute a vakalutnamah, constituting him pleader in the cause, and binding himself to abide by all acts which such pleader may do in his behalf, in the prosecution, or defence, of it. If not a pauper, he is also to deliver good security for the payment of the established fee to the pleader employed by him. Upon the decision of the cause, the pleader is to receive, either from his own client, or from the opposite party, as may be provided by the decree, a fixed rate of fee proportionate to the cause of action; being from five per cent on sums not exceeding one thousand sicca rupees, to eight annas, or half per cent, upon sums exceeding one hundred thousand rupees. † If a party

Retaining fee.

Vakalutnamah.

Security for pleading fee.

Rate of fee to be received, on decision of the cause.

* On the 25th January 1798, the court of sudder dewanny adawlat, in answer to a question from the judge of zillah Tipperah, whether pleaders might be allowed to subscribe a solemn declaration, as permitted to witnesses of a certain description, informed him that the oath required from pleaders, by Section IV, Regulation VII, 1793, cannot be dispensed with; and that the rule which authorizes a declaration only in certain cases, by witnesses, is not applicable to any public officers, who have the option of accepting, or declining, established offices, with the conditions annexed to them.

† The following table for the speedy calculation of the fees of pleaders in regular suits, according to the rates established by Section XI, Regulation V, 1798, was suggested by a gentleman high in the judicial department, and eminent for his talents and knowledge.

On sums not exceeding 1000 sicca rupees,		per cent.	
Ditto,	5000 ditto,	ditto,	4 + 10
Ditto,	10,000 ditto,	ditto,	3 + 60
Ditto,	25,000 ditto,	ditto,	2 + 160
Ditto,	50,000 ditto,	ditto,	1 + 410
Ditto,	1,00,000 ditto,	ditto,	Annas 12 or 2 + 535
Ditto, exceeding	ditto, ditto,	ditto,	8 or 2 + 785

A tax

What fee to be paid when two pleaders are employed.

Pleaders restricted from agreeing to receive less than the established fee.

Fees to be received when suits are withdrawn before, or after, the pleadings are completed.

Fees payable for simultaneous petitions, or motions, not relating to any regular suit.

For all acts relative to a regular suit, the established fee to be deemed a full compensation, and nothing to be received in addition to it.

Rate of fee, in summary processes, and in appeals from

party be desirous of entertaining two pleaders, he is either to pay each of them the established fee; or, if they agree to a division, it is to be specified in the vakalutnamah. But no single vakeel is permitted to agree with his constituent for less than the established fee, as a principal object in fixing the rates of fees for pleaders (that of inducing men of character and education to plead in the courts of justice) might be defeated by allowing such private agreement, which would frequently enable the most needy to engross the business; instead of a preference being given to superior qualifications and diligence. If a suit be withdrawn before the pleadings shall have been completed, the vakeels are entitled to half only of the established fees; but are to receive the full amount, as if judgment had been given in the cause, when it may be withdrawn after filing the whole of the pleadings. For petitions or motions, not relating to the particular suit for which a pleader may have received the prescribed fee, he is permitted to demand and receive a fee of four annas, for each petition or motion; or, if this appear insufficient, the court may award him such fee as may be deemed a just compensation for his labour, not exceeding one fourth of the established fee in a regular suit; but in every such suit, the fixed rate of fee, as above stated, is to be considered a full compensation for all acts done by pleaders relative to the cause in which they may be entertained, from the filing of it, until a final decision upon it be passed and enforced; and they are prohibited from demanding, or accepting from their clients, for pleading their causes, any sum of money, goods, or other valuable consideration, besides the fees which are expressly authorized. In summary processes for the recovery of arrears of rent, or for reinstatement in the possession of land in cases

A tax of five per cent, on the amount of all fees payable to the authorized vakeels of the civil courts, is deducted for government in pursuance of Section XXVII, Regulation VI, 1797, and Section XX, Regulation XLIII, 1803. The fonnas granted to pleaders are also required, by those regulations, to be written upon stamp paper, bearing a duty of twenty five rupees.

of forcible dispossession, as authorized by the regulations, the fees of any pleaders who may be employed are fixed at one fourth of the fees established for regular suits. They are also limited to that proportion by Section XXVI, Regulation XLIX, 1803, in appeals from nonsuits, or dismissals on default. The pleaders of government, who were originally appointed by the sudder dewanny adawlut, but under Regulation VIII, 1797, (and X, 1803, for the ceded provinces) now receive their appointments, as pleaders for government, from the Governor General in Council, are intitled to the same fees in causes which they may be authorized to plead on the part of government, as in causes between individuals; and are subject to the same rules; except that the order of government, or of the officer empowered by the regulations to superintend such suits on the part of government, is to be delivered and filed, instead of the usual vakalutnamah, as the authority for the public pleader to prosecute or defend the cause.

nonsuits or dismissals on default.

Pleaders of government, by whom appointed; and to what fees intitled.

Authority to be delivered by them, instead of a vakalutnamah.

PLEADERS guilty of disrespect in open court are liable to a fine, not exceeding one hundred rupees. If convicted of promoting litigious suits, or of fraud, or of any gross misbehaviour, though not relating to causes in which they may be concerned, they are to be suspended; and upon report (to be made within one month) to the sudder dewanny adawlut, may be fined or dismissed. A pleader wilfully delaying the suit of his principal, for his own advantage, is declared liable to prosecution by the latter, for damages; and all parties are at liberty to prosecute the pleaders who may have been employed by them, for any breach of the regulations; as well as for any fraudulent practices regarding the suits committed to them. Any party dissatisfied with the conduct of his pleader may also, at any stage of the trial previous to the decision, withdraw the powers delegated to him; and by a new vakalutnamah appoint another pleader, who in such case is exclusively intitled to receive the

Pleaders guilty of disrespect, promoting litigiousness, fraud, or other misbehaviour, how to be proceeded against.

In what cases liable to prosecution for damages.

Parties may, at any time, change their vakceels.

the

Persons employed as pleaders, when the cause is decided, are exclusively intitled to the fee upon it.

Fees to be levied, on decision, whether appealed from, or not.

And parties answerable for the fees of their own pleaders, if not recoverable from the opposite parties.

Provido, in such cases.

Any individual may plead his own cause, instead of employing a vakel.

Remarks upon the preceding rules, and the result of their operation.

the established fee. In like manner, if a pleader be removed from his office, or resign, or die, previously to the decision of any cause in which he may have been entertained, neither he or his heirs can claim any part of the fees in such cause. They are to be paid, in all cases, to the persons who may be acting as pleaders when the cause is brought to a decision; and are to be then levied without delay, whether the decision be appealed from, or otherwise.* Parties are considered answerable for the fees of their own pleaders, although the judgment may be in their favor, if the amount cannot be recovered from the opposite party. But in such cases, if the amount of the established fee appear to exceed a just compensation to the pleader or pleaders employed; the judge is authorized and required to levy such part only of the established fee as may appear to him an adequate compensation; leaving the remainder to be recovered from any property that may be subsequently found to belong to the party cast. Lastly, it is provided that no part of the regulations is to be construed to prohibit or prevent any individual from appearing and pleading his own cause in person.

THIS provision restricts the operation of the rules, for the appointment of pleaders, to parties who may not be able, or may not find it convenient, to attend the courts of justice; or who may for any reason prefer, to their own attendance, the employment of an established pleader for prosecuting or defending the causes in which they may be engaged. If all the advantages expected from an establishment of authorized pleaders, under the rules above stated, have not been yet obtained; it must be ascribed more to neglect on the part of the vakels appointed, to qualify themselves for their situations, and for the due performance of the duty required from them; than to any defect in the regu-

* It has further been determined by the sudder dewanny adawlat (on the 3d December 1795 and 15th July 1800) that the fees due to pleaders should be levied in execution of decrees, from the parties or their sureties, in preference to all other sums adjudged.

lations, the liberal compensation allowed by which is sufficient to render the office of a native pleader respectable and desirable.* It may be hoped therefore that as the prejudices, which formerly existed against the profession of a vakeel, cease to exclude men of education and character from engaging in it; as the courts are enabled to select men of that description, in conformity with the regulations, for filling all vacancies that may occur; and as the persons appointed to act as pleaders become, by experience, (aided by the attention and direction of the courts in which they are employed) better acquainted with the laws and regulations, and with the proper forms of pleading under them; the appointment and control of a regular establishment of pleaders will be productive of the full benefit intended by it. In the words of the preamble to Regulation VII, 1793, "the advantages of the plea-

Means of rendering the appointment and control of established pleaders productive of the benefit intended by government.

* As materially connected with this object, the following copy of a circular letter from the register of the sudder dewanny adawlat, to the provincial courts of appeal, written by order of government, on the 2d September 1802, is here inserted; in the hope that a general observance of the rule contained in it may promote conciliation; and obviate unnecessary humiliation, where it is impossible to suppose an intention of insult; or a want of that respect to Europeans, particularly to the officers of government, which is shewn so manifestly and universally, in every other mode; consistently with the established usages of the country.

"An instance has lately occurred, in which an English gentleman, filling an office under a court of justice, refused to admit the vakeels and native officers of the court to appear before him with their slippers on, according to usage, for the purpose of transacting public business.

"It became necessary in consequence to refer to His Excellency the Most Noble the Governor General in Council the question of the propriety of maintaining the practice thus objected to; and the court of sudder dewanny adawlat, to a report of the practice hitherto observed in that court, added their opinion that it is not in any wise derogatory to the dignity of a court of justice, nor disrespectful towards any of its officers, to allow natives of India, as heretofore, to appear before them with slippers, in apartments where floors are not prepared for sitting on, in the manner observed within the houses of natives themselves.

"His Excellency in Council has been pleased to express his entire concurrence in this opinion, and has judged it proper to direct, that natives shall not be prevented from wearing their slippers, at any place, or upon any occasion, where by custom, already established, it has been usual to admit them with their slippers.

"To guard against any recurrence of opposition to the practice, and prevent the dissatisfaction which must ever arise from the ill-judged and impolitic prohibition of any general and long established usage, His Excellency in Council has been further pleased to direct, that his orders be circulated to the courts of justice for their information and guidance. The sudder dewanny adawlat have accordingly directed me to communicate the same to your court, and to desire that you will extend the communication to the several courts within your division."

ders,

" ders will then be proportionate to their zeal, abilities and
 " integrity ; at the same time that their exertions to acquire re-
 " putation and emolument will necessarily conduce to the im-
 " provement of the judicial system. By the erection of tribu-
 " nals, constituted upon the principles of the courts of justice
 " established under the regulations, and confining the plead-
 " ing of suits to persons possessing the qualifications, and ac-
 " ting under the rules, prescribed ; individuals will be satisfied
 " that personal solicitation and intrigue are not requisite, either
 " to obtain their own rights, or to defend themselves from
 " oppression, or the unjust claims of others. They will feel
 " that they have an impartial, and all powerful protector in the
 " laws ; and that through the means of the public pleaders, they
 " can at all times command the exercise of the judicial powers
 " of government lodged in the courts, for the redress of any
 " injuries which they may sustain, either in their persons or
 " property."

R. XXXVIII,
 1795, extended
 to Benares by
 R. LX, 1795.
 R. VI, 1797.
 R. V, 1798.
 R. XLIII, 1803
 R. XLIX, 1803

Reasons for re-
 establishing a
 fee on the in-
 stitution of ci-
 vil suits; which
 was discontinu-
 ed in 1793.

ON the introduction of the new judicial system in 1793, a
 fee which had before been levied upon the institution of suits
 in the civil courts, varying from five to two per cent in propor-
 tion to the cause of action, was abolished ; and that every possible
 relief might be given to suitors, who should be compelled to
 have recourse to judicial process, for the recovery of their
 rights, no expense whatever, beyond the fee of the pleaders
 whom they might chuse to entertain, and the actual charge
 incurred in summoning their own witnesses, was annexed to
 the prosecution of any civil suit, or appeal. But experience
 having shewn that many groundless and litigious suits were
 instituted, in consequence of this remission of the fee before
 levied ; and that many superfluous exhibits were filed, from
 their not being subject to any charge ; whereby, as well as by
 summoning a number of unnecessary witnesses, the business of
 the courts was much increased ; and the decision of causes
 materially delayed ; it was enacted by Regulation XXXVIII,

1795, that an institution fee should be again paid upon suits, which might be thenceforth filed in the several courts of civil judicature; or which were then depending, and might not be withdrawn. Also, that a small fee should be levied on all exhibits filed in future in the civil courts; and upon all summonses or orders for the attendance and examination of witnesses. The rates of fees first established on these accounts have been since altered and raised by Regulation VI, 1797, (and Regulation XLIII, 1803, for the ceded provinces;) but the institution fee is still less than what was paid under the judicial regulations which were in force before the year 1793. The rates now prescribed are, from one anna per rupee, on sums not exceeding 200 rupees; to eight annas, or half per cent, on sums above 50,000 rupees; according to the amount or value of the cause of action.* The amount received on account of this fee, upon suits instituted before the native commissioners in their capacity of munsiff, or arbitrator, or referred to them from the zillah or city courts in their capacity of referee, is allowed, upon the determination or adjudgment of such suits, to the commissioner by whom they may have been decided upon an investigation of the merits; or before whom they may have been depending when adjusted by ra-zeenamahs of the parties. But the fee is not receivable by any commissioner for suits which may be dismissed for non-attendance, or upon any other ground of default, without a determination upon the merits of the case. The zillah and city registers, by whom any suit referred to them may be determined on an investigation of the merits of it, or before whom

Also, a fee upon exhibits; and summonses for witnesses.

Original rates of fees have been altered.

Present rates of institution fee.

In what cases the institution fee is allowed to the native commissioners.

Amount allowed, in certain cases, to the zillah and city registers.

* The following table for calculating the institution fee upon regular suits, at the prescribed rates, was suggested by the gentleman before referred to.

On sums not exceeding 200 sicca rupees,

Ditto,	ditto	1000	—	per cent	4 8
Ditto,	ditto	5000	—	ditto	3 14 8
Ditto,	ditto	25000	—	ditto	2 64 8
Ditto,	ditto	50000	—	ditto	1 314 8
Ditto,	exceeding	ditto	—	ditto	1 56 8

a suit may be depending when adjusted by the razeenamahs of the parties, are entitled to receive a moiety of the fee paid upon the institution of such suit. The remaining moiety of the fee paid in such causes, and the entire fee paid upon all original causes, or appeals, decided by, or adjusted before, the judges of the zillah and city courts, the provincial courts, and the sudder dewanny adawlut, as well as the fee paid upon the institution of suits dismissed on default by the zillah and city registers, or by the native commissioners, are carried to the account of government.

Remaining moiety, and the entire fee in other cases, carried to the account of government.

R. VI, 1797,
§ V, VI, VII,
and X.
R. VII, 1800,
§ XX, and
XXII.
R. XLIII, 1803,
§ V, VI, VII,
and X.

Rates of exhibit fee, and of fee upon summonses, or orders for examination of witnesses.

When payable, and on whose account.

Not payable on exhibits delivered to, or summonses issued by, the native commissioners.

THE exhibit fee, to be levied on all documents exhibited in evidence upon the trial of suits before the zillah and city judges, or registers, and upon the trial of appeals in the provincial courts and sudder dewanny adawlut, is fixed at the rate of eight annas, if the cause of action shall not be above two hundred rupees; one rupee, if the cause of action shall exceed two hundred, but not be more than one thousand sicca rupees; or two rupees, if the cause of action shall exceed one thousand sicca rupees; on every exhibit which may be filed in the above courts, in evidence of any fact relating to causes or matters depending before them respectively. The same rate of fee is also fixed for every witness, who may be summoned, or ordered to be examined on commission, by any of those courts. The fees on both these accounts are to be paid when the exhibits are filed, or when the summonses, or commissions for the examination of witnesses, are issued; and are to be carried to the account of government. No fee, of either of these descriptions, however, is payable on exhibits delivered to, or summonses or commissions for witnesses issued by, any native commissioner; and it has been explained that in cases of appeal from the decisions of the native commissioners to the zillah and city courts, the exhibit fee is to be taken on the exhibits delivered upon the trial of the appeal only.

It is further prescribed by the regulations for levying a stamp duty on account of government, that the pleadings in civil suits, tried by the judges or registers of the zillah and city courts, by the provincial courts, and by the fudder dewanny adawlut, as well as all miscellaneous petitions presented to those courts, shall be written on stamp paper, of a certain size and description, for every roll or part of a roll, expended in which, the following rates of duty are payable, as specified in the stamps. If the cause of action be not above one hundred sicca rupees, four annas; if above one hundred, but not exceeding two hundred sicca rupees, eight annas; if above two hundred, but not exceeding one thousand sicca rupees, one rupee; if above one thousand sicca rupees, two rupees. Petitions of plaint preferred to the zillah and city courts, and referred from them to the native commissioners, are required to be written upon stamp paper, in common with other petitions presented to those courts; but the subsequent pleadings, deliverable to the native commissioners in causes referred to them, are declared not to be within the provisions for stamp paper. All copies of papers furnished to any person at his own application, or in consequence of any regulation requiring him to take such copies, by the zillah or city courts, the provincial courts, or the fudder dewanny adawlut, are however required to be written on stamp paper, of a particular description, bearing a duty of two annas, four annas, eight annas, or one rupee, according to the size of the paper. But it has been explained that stamp paper is not requisite for any copies, or abstracts, transmitted by the courts of judicature to the board of revenue, or collectors; to the superior courts, or Governor General in Council; or for any copies of decrees, (or other papers)* prepared by the courts to remain with their own records.

In

What papers delivered to the zillah, city, and provincial courts, or to the fudder dewanny adawlut, are required to be upon stamp paper.

Pleadings delivered to the native commissioners, not included in this rule.

What copies of papers furnished by the courts mentioned, are also required to be on stamp paper.

* Decrees only are specified in Regulation VII, 1800, Section XVIII; but the obvious intention of it includes all copies of papers prepared by the courts to remain with their own records, as has been declared, on more than one occasion, by the court of fudder dewanny adawlut.

What paper to be used for decrees.

And rule for payment of stamp duty thereupon; whether the decree be taken out or not.

To what other copies the spirit of this rule is applicable.

Penalty for a wilful breach of the stamp regulations by any European or native officer of a court of justice.

And illegal copies not to avail the party filing

In consideration of the greater durability of English paper, it is directed that all decrees of the zillah, city, and provincial courts, and the court of sudder dewanny adawlut, shall be written upon paper of English manufacture, bearing a stamp duty of one rupee per sheet; and as the regulations require that authenticated copies of all decrees be prepared for delivery to the parties, they are to be held liable (paupers excepted) to the payment of the established duty on the stamp paper used for copies of decrees, so prepared for them, whether they attend to take out the same, or otherwise *. The same principle is to be applied to any copy of orders, or proceedings, which a party may be required to take; and which may be prepared on stamp paper in consequence; but not to any other copies of orders, or proceedings, which the parties are not required to take, and which they may not apply for. Any European or native officer of a court of judicature, who shall file, or knowingly allow any person to file, any pleading not written on stamp paper, as required by the regulations; or who shall furnish or make, or knowingly allow any person to furnish or make, * a copy of any record or paper belonging to the court to which he may be attached, except on the prescribed stamp paper; or who shall attest any copy not written on such paper; is declared liable to dismissal from his office; and the copies so illegally made, or attested, are not to be admitted in evidence;

adawlut. It is also clearly inferable from the explanation given in the above regulation and section, "that it was not intended to require any copies of judicial papers to be made upon stamp paper, *excepting such as might be furnished to the parties in causes, their wakats, or other persons, on their application, or in consequence of any regulation requiring them to take such copies.*"

* The judge of zillah Bahar was informed by the sudder dewanny adawlut, on the 16th January 1799, that the stamp duty on decrees forms part of the costs of suit; and should be levied accordingly.

† The court of sudder dewanny adawlut, on consideration of the terms of this clause, (in Section XVIII, Regulation VI, 1797,) informed the provincial, zillah, and city courts, on the 25th July 1800, that parties of wakats cannot be permitted to make copies, for their own use, of any records or papers belonging to the courts, except on stamp paper. But they are allowed to take, upon unstamped paper, extracts, or memoranda, to enable them to plead in depending causes; and there is no prohibition against their furnishing each other, upon any paper, with copies of their respective pleadings, or other documents.

nor

nor the pleading, so illegally written, to avail the party who may have filed the same; until a penalty be paid of ten times the amount of the stamp duty, which would have been payable on such pleadings or copies, if they had been written on the prescribed stamp paper. Native officers who may file any pleading, petition or document*, required to be upon stamp paper, which shall not be written on the prescribed paper, or who shall furnish a copy of any judicial paper, or proceeding, required to be upon stamp paper, upon any other paper than that prescribed, are further declared liable (besides dismission from office) to a fine to government, recoverable by summary process in the civil courts, equal to ten times the amount of the stamp duty which would have been payable if the prescribed paper had been used for such pleading, petition, document, or proceeding.

them without payment of ten times the prescribed stamp duty.

Native officers further liable to a fine, of ten times the duty, in such cases.

It has been explained by Section VII, Regulation V, 1798, that the fee, directed to be paid upon the institution of suits in the zillah and city courts, was established with a view to regular suits, instituted for trial under the rules prescribed in Regulations III, and IV, 1793, and not to be taken on summary suits, for recovering the possession or rent of land. It is further provided by Section XXVI, Regulation XLIX, 1803, that no institution fee is to be levied upon the summary appeals allowed in cases of nonsuit, or dismissal on default, without an

R. V, 1753, § VII.
R. VII, 1799, § XVIII.
R. XXVIII, 1803, XXXV.
Institution fee not demandable on summary suits.

R. XLIX, 1803, § XXVI.
Nor on summary appeals in case of nonsuit, or dismissal on default.

* Besides the pleadings and copies of judicial papers specified, obligations for the payment, and acknowledgements for the receipt, of money, exceeding sixteen sicca rupees, (excepting obligations and acknowledgements, on the part of government; or for money payable to, or receivable by government, or on account of the rent of land paying revenue to government); as well as all deeds of contract and agreement, or other legal instruments, and all copies of such, which may be prepared as legal vouchers (excepting deeds, to which government may be one of the contracting parties) and all petitions or applications to the board of revenue, collectors, or other revenue officers, and copies of any papers furnished to individuals by such officers, are likewise required by the regulations to be upon stamp paper; as will be more fully stated in the third part of this analysis. On the 4th August 1801, the Sudder dewanny adawlut declared the receipts of pleadings for their fees, and vakalnamas, mokarnamas, security bonds, ikrarnamas, and razabarnamas, delivered to the courts of justice, to be within the provisions of Sections IV and V, Regulation VII, 1801; the payments for fees being from individuals to individuals, though made through the courts; and the above descriptions of papers being all legal instruments.

investigation

Neither exhibit or institution fee to be levied in summary process for arrears of rent.

But rules for stamp paper applicable to such, and to all cases wherein it is required.

R. XLVI, 1793, extended to Benares by R. XXIII, 1795.
R. VI, 1797, § IX, X, and XIX
R. X, 1797, § XIII.
R. VII, 1800, § XVI.
R. XIV, 1803.
R. XLIII, 1803, § IX, X, XIII, and XVI.

Courts of justice empowered to dispense with the payment of stated fees, and stamp duty; and with security for the fees of pleaders; in behalf of paupers.

Evidence of poverty required in such cases.

investigation of the merits of the claim; and by Section XVIII, Regulation VII, 1799, (re-enacted for the ceded provinces by Section XXXV, Regulation XXVIII, 1803,) that neither the institution fees, or fees upon exhibits, are to be levied in the summary processes for arrears of rent authorized by those regulations. But the rules for stamp paper are to be considered applicable to such processes; as in all other cases wherein stamp paper is required to be used, whether for original papers, or for copies.

THE courts of justice however are empowered to dispense with the payment of the institution fee, the exhibit fee, the fee upon summonses or commissions for the examination of witnesses, and the duty upon stamp paper; as well as with the security required for the payment of the fees of pleaders; in all cases of poverty, and inability to make such payments; or to furnish such security. In miscellaneous matters, not connected with any cause to be instituted, or depending before the civil courts, they are authorized to dispense with the payment of the prescribed fee, and to furnish stamp paper free of duty, upon the oath of the party, and any evidence of his poverty which they may deem sufficient. But for the admission of parties to institute an original suit, or appeal, as paupers, and for employing an authorized pleader to prosecute the same, it is directed that their inability to pay the institution fee, and to give the security required for the fees of pleaders, be proved to the satisfaction of the court, by the oath of the plaintiff or appellant*; and by the evidence of two credible witnesses, who are to be sworn that they

* On the petition of RAJESWAR DEBA to prefer an appeal in *hera* *pratha* upon her husband's namah or solemn declaration, without oath, the court of sudder dewan, Calcutta (October 11, 1797) rejected her application; as not being conformable to Section II. Regulation XLVI, 1793, which expressly requires the oath of the party; and as the appellant was a woman of rank, her oath was directed to be taken by commission in the mode provided in Section VI, Regulation IV, 1793, for female witnesses who may be attended by an *amral* of the country from personal appearance in a court of justice.

believe such oath to be true. The plaintiff, or appellant, *in forma pauperis*, is also to find two good and sufficient sureties for his appearance whenever his attendance may be required by the court. If the party, so admitted as a pauper, shall gain his suit, or appeal, the courts are to cause the defendant, or respondent, to make good the amount of all fees demandable from the pauper; or such part thereof as may be adjudged payable by the former under their decree. If the claim of a plaintiff, admitted to sue as a pauper in any zillah or city court, be not established; and the judge or register, by whom the suit may be dismissed, shall deem it groundless and vexatious; and the plaintiff shall not pay the amount of his own fees, and the fees and costs which may be awarded against him in favor of the defendant; the court is authorized and required, whether he shall appeal from the judgment passed against him, or otherwise, to commit him to close custody, for any period of time not exceeding three months. If the plaintiff's sureties shall not produce him, so that he may be proceeded against as directed; and shall not cause the fees and costs adjudged against him to be paid, the court is required to commit such sureties to jail for any period not exceeding three months. At the expiration of that period, the sureties, or the plaintiff himself, if confined under an original judgment, are to be released. But in the event of an appeal, if the court by whom the appeal may be heard shall find the same groundless and vexatious; and shall consequently confirm the original judgment; it is authorized to commit the litigious appellant, or his sureties, if they shall not produce him, to be confined for such time as may be judged proper on consideration of the circumstances of the case; not exceeding six months, inclusive of any confinement ordered on the original trial. In cases of appeal by paupers to the sudder dewanny adawlut, that court is further authorized to extend the confinement of litigious appellants to any period not exceeding one year; inclusive of the confinement which may have been ordered by the zillah,

Fees by whom
appealant to
be found by
paupers.

Fees by whom
to be paid, if the
pauper gain his
suit.

Process against
paupers, and
their sureties, if
their claims be
dismissed, and
appear vexatious.

Fees and costs
adjudged against
paupers, recoverable from
any property
subsequently
found to belong
to them

Authorized vakeels permitted,
and in certain
cases, may be
required, to
undertake the
causes of paupers
under the provisions
of this act.

Not provided
by the regulations
for parties
defendant, but
in cases
of paupers

Security.

Fees of pleaders.

Institution fee.

city, or provincial courts. Moreover, if a plaintiff, or appellant, who may have sued as a pauper, and have been cast, shall not pay the fees and costs adjudged against him; and shall be afterwards found to possess property sufficient to make good the same; the courts are directed to proceed against such property for the recovery of the amount due, whether the suit shall have been pronounced litigious or otherwise. The authorized pleaders in the several courts are permitted to undertake the causes of paupers under these provisions; and if a pauper shall be unable to prevail on any of the vakeels to undertake his suit; the court, on being satisfied of his inability to plead the cause in person, may require one of the established vakeels to undertake and plead it for him; recording the reasons which may induce an exercise of this power.

The provisions made for facilitating the attainment of justice to paupers having been found to encourage groundless and exaggerated claims, which are prosecuted as far as the regulations allow, with a view to harass the defendant or to compel admission of what may not be justly due from him; it was deemed proper, in addition to the extended imprisonment of litigious appellants, now authorized for the punishment of so flagrant an abuse, to provide, as far as possible, for the relief of the parties affected thereby. The discretion vested in the courts, with respect to the security required from defendants, and the fees of their pleaders when the plaintiff's claim may be dismissed with costs, but his property may not be sufficient to make good the same, has been already mentioned. It is further provided by Section V. Regulation, III, 1802, that "if on the suit of a pauper plaintiff, tried by a native commissioner, or by a zillah or city register, or by the judge of a zillah or city court, a judgment be passed in favor of the plaintiff; and the defendant appealing from such judgment, shall obtain a reversal of it,

“ it, with costs: so that the final judgment may be in favor
 “ of the defendant; and the original claim be declared ground-
 “ less; the institution fee paid by such defendant, upon his
 “ appeal,* shall be returned to him by the court, into which
 “ the same may have been paid, and the amount shall be
 “ recovered from the pauper against whom the final judg-
 “ ment may be passed, in the event of his being found to
 “ possess property sufficient to make good the same, as pro-
 “ vided in Section III, Regulation XI.VI, 1793. In all other
 “ cases, the court of sudder dewanny adawlut is authorized
 “ to direct a return of the institution fee, or otherwise, as on
 “ due consideration of the circumstances of the case, whe-
 “ ther brought before them in appeal, or referred to them
 “ by a provincial, zillah, or city court, may appear to them
 “ just and proper.” *

General power
 vested in the
 sudder dewan-
 ny adawlut, to
 direct return of
 institution fee
 when it may
 appear just and
 proper.

It being essential to the due administration of justice, that
 the law officers of the courts of judicature should be qualified
 by their knowledge and characters for the discharge of the
 important trust reposed in them; and that persons possessing
 the requisite qualifications should be encouraged to expound
 the laws with independence and integrity, by an assurance of
 their continuance in office whilst they perform their duty
 with uprightness; it is enacted by Regulation XII, 1793,
 (and Regulation XI, 1803, for the ceded provinces) that “ the
 “ law officers of the sudder dewanny adawlut, th enizamut

R. XII, 1793,
 extended to
 Benares by
 R. XI, 1795.
 R. XI, 1803.
 R. V, 1804.
 Rules for the
 nomination, ap-
 pointment, and
 removal, of the
 law officers of
 the courts of
 judicature,
 civil and crimi-
 nal.

* In the case of an interlocutory appeal, the sudder dewanny adawlut, (on the 15th March 1798,) refused to return the institution fee paid on the appeal, but informed the appellant, that he would not be liable to any further institution fees in the event of his preferring a second appeal from the final decision. The same principle has been since adopted in Section XXII, Regulation XLIX, 1803, relative to appeals from decisions of the native commissioners. On the recent application of a provincial court, to ascertain whether an appellant paying the institution fee, and afterwards failing to give the prescribed security for the admission of his appeal, be, on the rejection of it, entitled to receive back the institution fee paid by him; the court of sudder dewanny adawlut (on the 6th July 1803) determined, that the appellant cannot, of right, demand repayment in such case, (the fee being forfeited, as in other cases of default,) but that if under any particular circumstances (such as real inability to give the required security) it appear just and proper to return the fee, a reference should be made to the sudder dewanny adawlut, under Section V, Regulation III, 1802.

adawlut,

" adawlut, the provincial courts of appeal, the courts of circuit, and the zillah and city courts, shall be appointed by the Governor General in Council; and shall not be removable, but for incapacity or misconduct in the performance of their public duty, or for flagrant profligacy in their private conduct, proved to his satisfaction." Also that " the law officers in the several courts shall be conferred on persons well versed in the laws, and of unblemished moral characters." The same regulations prescribe an oath to be taken half yearly (for the reason before noticed) by the Mahomedan law officers of the several courts of civil judicature, and a solemn declaration, to be made and subscribed by the Hindoo law officers, attached to those courts*. Further provision is made by Regulation V, 1804, for the process to be observed in the removal of any law officer for incapacity, or misconduct; as well as for filling up any vacancy which

* The exemption of Hindoo law officers, in this instance, from the oath imposed upon the Mahomedan law officers, was probably founded on the consideration of their being, as Pundits and Brahmins, within the description of persons, who are exempted from being sworn as witnesses, if their rank and cast be such as, according to the prejudices of the country, may render it improper to compel them to take an oath. It has been ascertained however, from the law officers themselves, that those prejudices have no just foundation in the Hindoo or Mahomedan religion, or law. On the contrary (as stated in the preamble to Regulation L, 1803,) " the cauzee-ool-cuzat and mooftees of the court of nizamat adawlut, have declared, that there is no prohibition against an oath to the truth being taken by Musulmans in any case, (although it is not required by the Mahomedan law to give validity to evidence in judicial cases;) and from the report of the pundits of the court of sudder dewanny adawlut, it appears, that the Hindoo law not only authorizes, but requires the oaths of witnesses in civil and criminal cases; and prescribes the form in which oaths may be administered to persons of various tribes, regard being had to the importance of the matter in dispute: that no person of whatever rank is prohibited from taking an oath in a court of justice; nor is there any objection, grounded on law or usage, against administering the oaths prescribed by the law; that Brahmins, rigidly observant of the duties of the priesthood, are exempted by one ancient author (Gorux) from taking an oath, and may therefore be heard as witnesses upon their simple affirmation; but that the other authorities of the law, which do not contain this exemption, prevail over the single text of Gorux, and declare no dispensation in favor of any description of persons; and, pronounce no form of oath sinful excepting as far as the Soother cast is restricted from handling certain idols; and that the form now in use, of swearing by water of the Ganges, and by copper and toolis, is virtually sanctioned by many Shasters; but that other prescribed forms are of equal validity; and that all oaths made by laying the hand on any symbol or image of the deity have the same obligation." The regulation, from which the above quotation is taken, adds " under

which may occur in a law office, from removal, resignation, or death. The grounds of removal, with the defence of the party, and the qualifications of the proposed successor, are to be reported, in all such cases, through the court of sudder dewanny adawlut, or nizamat adawlut, for the approbation and orders of the Governor General in Council; as subsequently stated with respect to the principal ministerial officers of the courts. The rules hereafter noticed, regarding charges of corruption and extortion against the native ministerial officers of the civil and criminal courts, are also declared applicable to charges of a similar nature against the Hindoo or Mahomedan law officers; with the following qualifications. An appeal lies to the sudder dewanny adawlut, from all decisions passed by the provincial courts, on a charge of corruption or extortion against a law officer, whatever may be the amount adjudged; or whether the charge be proved or otherwise. A copy of the final decree, or any decree not appealed from, in such cases, is to be transmitted to the Governor General in Council; who has reserved to himself the power, when the charge may be established, of dismissing the officer from his office; or of both dismissing him and declaring him incapable of holding any future employment under government; in addition to the judgment he is liable to for refunding the amount, or value, of any money, or property, proved to have been corruptly received or extorted; and the payment of a fine to government of three times

What rules applicable to charges of corruption or extortion against a law officer

Special provisions in such cases.

"under these authoritative expositions of the Mahomedan and Hindoo laws, it may be expected that the erroneous prejudice, which has arisen against taking an oath, will, in time, cease, and that all persons of whatever rank or cast, or of whatever religious persuasion, will be ready, when called upon for their evidence in a court of justice, to establish its truth by the solemn appeal of an oath; especially if allowed to do so in any of the prescribed forms which may be practicable, and suitable to the occasion." This object is highly desirable for the ends of justice; and as the exemption of any particular description of persons, from taking an oath, tends to depreciate the credit of those upon whom it is imposed; and consequently to maintain the prejudice against being sworn; it may be advisable to discontinue the dispensation in favor of rank and cast, which is now allowed. The frequent, and in some respects degrading, repetition of a retrospective oath, imposed upon the Mahomedan law officers, (if not that required from the Mosulman Vakeels) might also perhaps be discontinued without danger of any ill consequence; and many respectable public officers would be highly gratified by it.

the

the amount. The Governor General in Council has likewise reserved to himself the power of suspending any law officer, against whom a charge of corruption or extortion may be preferred, until a final decision shall be passed upon the charge; whenever it may appear to him expedient.

R. III, 1793,
& XIII, ex-
tended to Pen-
ares by R. XII,
1795.
R. XII, 1803.
R. V, 1804.

Registers and
other civil and
criminal officers,
who are cove-
nanted servants
of the Com-
pany, by whom
appointed; and
oath to be taken
by them.

Official acts to
be performed by
them.

Judicial pow-
ers vested in the
zillah and city
registers.

R. IV, 1796,
& VI
Restriction.

R. V, 1804.
Rules for the
appointment
and removal of

THE registers to the courts of civil judicature, and their assistants, as well as all ministerial officers of the civil and criminal courts who may be covenanted servants of the Company, are appointed by the Governor General in Council; and previously to entering upon the execution of the duties of their offices are required to take and subscribe, in open court, before the judge or judges of the court to which they may be attached, the oath prescribed in Section III, Regulation XIII, 1793, re-enacted for the ceded provinces by Section III, Regulation XII, 1803. The " registers to the civil " and criminal courts are to perform all such official acts as " may be prescribed to them by the judges of the courts; " who are empowered to assign, to ministerial officers, attached " to their several courts, the particular duties or business to " be performed by them respectively." They are also required, with their assistants, and the native officers attached to the courts, " to procure all acts of the courts to be executed; " in the manner and conformably to the rules which the " judges of the courts may think it proper to prescribe." The judicial powers which the zillah and city registers are authorized to exercise, in suits within the prescribed limitation referred to them by the judges, have been already mentioned; and it will be sufficient to add, in this place, that the registers and assistants to the civil and criminal courts are restricted from the exercise of any judicial powers, except in cases expressly provided for by the regulations.

For the purpose of ensuring a faithful, diligent, and able discharge of the duties assigned to the native ministerial officers

officers employed in the judicial and other public departments ;
 that such officers (with an exception to certain descriptions
 of public servants, who are nominated, and removed upon
 sufficient cause, by their immediate superiors, under the res-
 ponsibility of the latter for their good conduct) may be se-
 cured in possession of their respective offices, whilst they
 perform their duties with diligence, ability and integrity ;
 and that the persons appointed to fill all vacancies in such
 offices may be selected with due regard to their characters
 and qualifications ; rules for the appointment and removal of
 the native officers of government in the judicial, revenue,
 and commercial departments, have been prescribed by Re-
 gulation V, 1804 ; under which the confirmation and remo-
 val of the head ministerial native officers employed in the
 courts of fudder dewanny adawlut and nizamat adawlut, the
 provincial courts of appeal and circuit, the zillah and city
 civil courts and the courts of the magistrates in the several
 zillahs and cities, are reserved to the Governor General in
 Council. The judges of the courts, to which such officers are
 attached, nominate the persons to succeed, in all cases of va-
 cancy, from death, resignation or removal ; but are to report
 to the Governor General in Council, through the fudder de-
 wanny adawlut, or nizamat adawlut, any information obtain-
 ed by them of the past employment, character, and qualifi-
 cations of the proposed successor ; and the above courts, in
 submitting such reports to government, are to add whether
 they are aware of any objections to the proposed appointment.
 It is also required that all resignations be received and recorded
 in open court ; and that whenever the judges may see cause
 for the removal of any of their head native officers, on the
 ground of misconduct, incapacity, or otherwise, they shall
 communicate to such officer the grounds upon which they
 may consider him underserving of continuance in his station,
 and call upon him to state what he may have to offer in his
 defence. If his answer appear unsatisfactory ; and they shall
 consequently

the ministerial
 native officers.

Head ministerial
 native officers.

consequently be of opinion that he ought to be removed; a report of the circumstances of the case, with a copy and translation of the communication made to the officer and his answer, and of any proceeding or documents which may be necessary for the full information of the Governor General in Council, are to be transmitted to him, through the court of sudder dewanny adawlut, or nizamat adawlut; who are to state their opinion whether there appear to be sufficient grounds for the dismissal of the officer proposed to be removed; or, in cases of resignation, whether any objection occur against accepting the resignation transmitted. The nazirs of the several courts of judicature, civil and criminal, as well as the police darogahs, tehseeldars vested with the charge of the police, and other police officers acting immediately under the zillah and city magistrates, are allowed to appoint, and to remove upon sufficient cause, their own naibs, and the inferior public servants employed under their direction and control; subject to the approbation of the judges and magistrates; and to their own responsibility, under a penal obligation, in such sum as may be required by the courts to which they are attached, for the good behaviour of persons so appointed by them. The judges of the several courts, civil and criminal, are likewise vested with a discretion to appoint or remove upon sufficient cause, without reference to superior authority, any other native officers forming part of their public establishments, whose salary, or allowance, shall not amount to ten rupees per mensem. But they " are directed to record on their proceedings the " grounds upon which any native officers may be removed by " them, and are required to exercise the power vested in them, " in the appointment and removal of the inferior officers ac- " ting under them respectively, with due regard to the pub- " lic service, and the rights of individuals; by selecting pro- " per persons to fill all vacancies in the situations of such offi- " cers, and by continuing in office the persons appointed, " whether by themselves, or their predecessors, whilst they " discharge

Naib-Nazirs,
and inferior
public servants
subordinate to
nazirs, police
darogahs, and
other principal
police officers.

Other native
officers, whose
monthly allow-
ance is less
than ten rupees.

“ discharge the duties assigned to them with diligence and integrity.” It is further provided, that all native officers employed in the courts of judicature, civil and criminal, whose salary or other allowance may amount to ten rupees per mensem, or upwards; and whose appointment and removal may not have been reserved to the Governor General in Council; shall not be removed from their respective offices, without the sanction of the sudder dewanny adawlut, or nizamat adawlut; and reports are to be made to those courts, in such cases, as well as for the confirmation of all persons nominated to succeed, when vacancies may occur in the stations of any such officers, from death, resignation, or removal; similar to those required respecting the head ministerial officers whose confirmation and removal are reserved to the Governor General in Council*.

Native officers whose salary amounts to ten rupees per mensem, and whose appointment and removal are not reserved to the Governor General in Council.

“ THE fistadars or other head native officers, moonshees, mohrirs, and nazims of the civil and criminal courts,” are required to take and subscribe in open court, before the judge or judges of the court to which they may be attached, the oath prescribed in Section IV, Regulation XIII, 1793; re-enacted for the ceded provinces by Section IV, Regulation XII, 1803. By the same regulations “ the ministerial officers of the civil and criminal courts (under which designation are comprehended the registers and the assistants to the registers, or any other subordinate officers being covenanted servants of the Company; and all native officers attached to the courts, excepting the law officers;) are declared amenable

R XIII, 1793.
R XII, 1803.
Oaths to be taken by certain native officers of the civil and criminal courts.

To what courts the ministerial officers, European and native, are amenable for acts of extortion.

* It is further directed by Section XXI, Regulation V, 1804, that in all detailed statements of establishments of native officers, required to accompany any public account, the names of the native officers actually employed, and receiving an allowance of ten rupees per mensem or upwards, shall be uniformly inserted. And by Section XXIII, “ the several officers of government in the judicial, revenue, and commercial departments, and in the departments of salt, opium, and customs, who are already restricted by their official oaths, or by the known declarations and orders of government, from deriving any personal advantage whatever from their fixed establishments of native officers, are positively prohibited from making any alteration whatever in the distribution of the salaries of such officers; or in the number and designation of the several descriptions of native officers, which now compose, or may hereafter compose, their authorized establishments, without the express sanction of the Governor General in Council.”

Oath, or declaration, required from complainants in such cases.

In what cases the provincial courts of appeal may receive such charges; and how to proceed thereupon.

Such charges, when receivable and how to be proceeded on, by sudder dewanny adawlut or nizamat adawlut.

“ to the courts, to which they may be respectively attached,
 “ for acts of corruption or extortion. Previously however
 “ to receiving the charge, the courts are to require the com-
 “ plainant to make oath to the truth of it (or subscribe the
 “ required declaration if he shall come within the description
 “ of persons whom the courts are empowered to exempt from
 “ taking oaths) and give security in whatever sum they may
 “ judge proper, to prosecute the charge without delay.”
 The provincial courts of appeal are also empowered to receive charges of corruption, or extortion, against the ministerial officers of any zillah or city court relative to any appeal, or matter depending or decided in the provincial courts; or though not relating thereto, if it be proved to their satisfaction that the zillah or city court omitted or refused to receive the charge when regularly preferred to it, in the first instance: and to refer the same for trial to the zillah or city court, to which the accused may be attached; provided the complainant shall make the prescribed oath or declaration, and give the security required; or if there appear to the provincial court to be any objections against referring the charge to the court to which the accused is attached, they are to report the same to the sudder dewanny adawlut; which court is empowered to cause the charge to be tried by the provincial, zillah, or city court, as it may deem expedient. The courts of sudder dewanny adawlut and nizamat adawlut are, in like manner, empowered to receive charges of corruption or extortion, against any ministerial officer of a provincial court of appeal, court of circuit, zillah or city court, relative to any appeal or matter depending or decided in those courts; or though not relating thereto, if it shall be proved to their satisfaction, that the charge, when regularly preferred, was not received by the proper court, in the first instance; nor by the provincial court, on regular application to it after a refusal of the charge by the zillah or city court; and provided the complainant shall make the prescribed oath or declaration,
 and

and give the security required, may refer the charge for trial to the court to which the accused is attached; or if there appear any objections thereto, may cause the charge to be tried by the sudder dewanny adawlut; or, if it be against a ministerial officer of a zillah or city court, by the provincial court of the division in which such court may be situated.

CHARGES of corruption, or extortion, against the ministerial officers of any civil or criminal court of judicature, are to be considered as civil actions; and to be prosecuted in the civil courts. If the charge be established, in whole or in part, against any such officer, the court is to adjudge him to refund the amount or value of any money or property which he may be proved to have corruptly received; or taken by extortion; and to pay a fine of three times the amount to Government. From all decisions passed by the provincial courts on such charges, against a covenanted civil servant of the Company, an appeal lies to the sudder dewanny adawlut; whatever may be the amount of the decree; and whether the decree adjudge the charge to be proved or not. All process against any such ministerial officer is to be transmitted to him, under a sealed cover, in the form of a letter, directed to his address; and is to be returned in the same form, with an endorsement acknowledging the receipt of the process. A copy of the final decree, or of any decree not appealed from, by which a covenanted servant of the Company may be convicted or acquitted of a charge of corruption or extortion, is to be transmitted to the Governor General in Council, who will order the amount of any judgment against such officer to be deducted from the allowances payable to him; or take such other measures for enforcing it as he may judge expedient. It is further declared that the Governor General in Council, provided he shall think it proper so to do, will dismiss such officer from his appointment; or both dismiss him from his station and suspend him from the service of the Honorable Company.

To be considered civil actions and prosecuted in civil courts.

Judgment to be passed in cases of conviction.

Appeal to sudder dewanny adawlut from all judgments on such charges, against a covenanted servant of the Company.

Process against such officers how to be served and returned.

Copy of decree to be transmitted to Governor General in Council.

Who will order enforcement of it.

And, if he judge it proper, will dismiss the officer; or suspend him from the service.

Also,

Will also, if deemed expedient, suspend any officer from his appointment, until a final decision be passed. Courts of justice may suspend a native officer so charged.

And power reserved to the Governor General in Council to declare him incapable of serving government, if convicted.

Option to sue for damages if the charge be not proved.

Rules for trial, and punishment on conviction, of charges of corruption or extortion, against any private servant or dependant, of the judge of a civil or criminal court.

Also, that in cases, wherein he may judge it expedient, the Governor General in Council will suspend any ministerial officer, charged with corruption or extortion, from his appointment, until a final decision be passed on the charge. The courts of justice are vested with a power of suspending any native officer so charged, until a final decision be passed; and if he be convicted of the charge, a copy of the decree is to be transmitted to the Governor General in Council, who has reserved to himself the power of declaring any such officer incapable of serving government in any future capacity. If the charge be not proved, whether against an European or native ministerial officer, the accused is declared to have an option of suing the accuser for damages, in any court of civil judicature to which he may be amenable. Finally, it is provided, that “ if a native servant or
 “ dependant of any judge of a civil or criminal court of judica-
 “ ture, not being a public officer attached to the court, shall extort-
 “ or receive, directly or indirectly, any money or other valu-
 “ able consideration, under any pretence whatever, from any
 “ party or person, on account of any suit to be instituted, or that
 “ may be depending, or have been decided, in the court, he shall
 “ be committed as for a contempt of court, and be punished
 “ by a fine equal to treble the sum of money extorted or
 “ received, or by imprisonment, or corporal punishment, at the
 “ discretion of the court; and the judge is required to discharge
 “ such servant or dependant, and never to employ him, directly
 “ or indirectly, in his public or private capacity. If the offender
 “ shall not appeal against the decree within the limited time, or
 “ if an appeal shall not lie from the decision, or if the decision
 “ shall be confirmed in appeal, the court by which the final
 “ decree may be passed, shall transmit a copy of it to the Go-
 “ vernor General in Council; who, in addition to the penalties
 “ or punishments specified in the decree, will, if there shall
 “ appear to him grounds for so doing, declare the offender in-
 “ capable of serving Government in any capacity.”

minal

Reason for following, incl. vacation.

“ criminal courts are open; and in consequence of the opportunity thus given them to apply for leave of absence during the fixed vacations, it is expected they will not make such applications, at any other period, except in cases of indispensable necessity.”

R. IV, 1796
R. II, 1801,
§ XV.
R. II, 1803,
§ XXIII.
R. XII, 1803,
§ XV.
R. XLIX, 1803,
§ V.
R. II, 1805,
§ XIV.
Applications
for leave of ab-
sence, to
whom, and in
what manner to
be made, by the
judges of the
provincial, zill-
lah, and city
courts; their
registers, and
assistants.

The judges of the provincial, zillah and city courts, are restricted from leaving their stations, except in emergent cases of indisposition, without the permission of the Governor General in Council; previously to granting which, a reference is to be made to the fudder dewanny adawlut and nizamat adawlut, to ascertain the state of the public business depending before the judge or magistrate by whom leave of absence may be desired; and whether the same can be conveniently granted or otherwise. Applications for leave of absence to the registers and assistants are ordered to be made to the Governor General in Council through the court to which they may be attached; and the judges are directed “ not to grant leave of absence to their registers or assistants, without having obtained the previous sanction of government, except when serious indisposition may render it absolutely necessary that they should leave the station immediately; in which event they are to report the circumstance for the information of government.*” The letter of application, in all cases, is to specify the purpose for which the leave of absence is applied for, the period for which it is desired; and if from a zillah or city judge and magistrate, the name of the assistant judge, register, or senior assistant on the spot, to whom the charge of the offices of judge and magistrate will devolve, if not otherwise provided for. When leave of absence is granted to any zillah or city judge and magistrate, it rests with the Governor General in Council to determine whether to delegate the temporary execution of the duties of judge and magistrate, to the assistant

Duties of a zillah or city judge and magistrate, by whom to be performed, during his absence, or in cases of death or other casualty.

* This is not expressly included in any existing regulation; but has been directed by a general order of government, passed on the 11th March 1796, in the terms quoted.

judge, register, or senior assistant on the spot; or to make such other provision for carrying on the business of the station as may appear to him expedient. In cases of death, indisposition, or other casualty, wherein the charge of the offices of judge and magistrate may devolve to an assistant judge, register, or senior assistant on the spot, without any express provision for the same having been made by government; an immediate report of the case is to be made to the Governor General in Council; till the receipt of whose orders, and subsequently, if the officer to whom the charge may devolve shall not be empowered to officiate as judge and magistrate, he is to exercise, beyond the discharge of the proper duties of his own station, such part only of the powers of judge and magistrate as may be necessary for executing the processes of the superior courts; for preserving the peace of the district, or other cases of emergency; and for performing the duties which (by Section XIV, Regulation II, 1805,) are expressly authorized to be performed in such cases by the senior judicial officer on the spot.

Report to be made to government in such cases; and functions to be executed by senior judicial officer on the spot, until order is received.

FOR the purpose of preventing injury to public or private rights, or property, by the loss, destruction, or removal, of the records of the courts of judicature; as well as with a view to facilitate the means of reference to them on all occasions requiring it; two native keepers of the records are appointed for each of the zillah and city courts, civil and criminal; the provincial courts of appeal and circuit; and the courts of sudder dewanny adawlut and nizamat adawlut. These officers are not removable, except for misconduct proved to the satisfaction of the Governor General in Council, upon reports to be submitted to him, in the manner before stated with respect to the head ministerial officers of the courts. They are to keep a register, in the Persian and Bengal languages in Bengal and Orissa, and in the Persian and Hindoo-stanee languages in the other provinces, of all the dewanny

R. XVIII, 1793, extended to Benares by R. XVIII, 1795.
R. XXXVII, 1795.
R. V, 1798, § XVI.
R. XIII, 1803.
R. XLIX, 1803, § XXVII.
R. V, 1804, § X.
Rules for preserving records of the courts of judicature.

Appointment of record keepers and their duties.

and

and foudarry proceedings, documents, and other records of the courts to which they may be respectively attached, in a book to be attested by the official signature of the registers or affillants; and are to see that the judicial records of the courts, committed to their care, are not destroyed by insects, damp, or otherwise; as well as that they are not removed without the orders of the courts. For any neglect of this duty; or if any records, entered in their registers, shall not be forthcoming, and they shall not be able to give a satisfactory account of them; they are liable to dismissal from their offices. The several courts of civil justice are likewise required to keep a book of daily proceedings, in which every order or act of the court is to be minuted, in the languages above specified; with references to the pleadings, depositions, exhibits, and other papers read and filed in each cause; and to be attested with the signature of the judge; or in the provincial courts and fudder dewanny adawlut with the signature of the register.* For the information of the latter courts, the zillah and city judges are directed to furnish a monthly report of causes decided, by themselves, their registers, and the native commissioners in their respective jurisdictions. Also a half yearly report of depending causes; to be transmitted in abstract only on the 1st July; but with a Persian detail, on the 1st January of each year, and an explanation of the reasons which may have prevented the decision of any causes included in a former half yearly report. Similar monthly and half yearly reports are required to be furnished by the provincial courts of appeal. And an abstract of the whole, including the causes decided by, or depending before, the fudder dewanny adawlut, is prepared by the register of that court; and submitted, with the court's remarks and orders upon the reports of the

Penalty for neglect of duty.

Book of daily proceedings to be kept by each court.

Monthly report of decided causes.

And half yearly report of depending causes.

* The book of daily proceedings for causes tried by the registers & the zillah and city courts, and for all orders passed or acts done by them, in their judicial capacity, is also to be kept and attested by the register.

provincial, zillah and city courts, for the information of the Governor General in Council *.

RESERVING for a subsidiary section the few legal provisions, in matters of civil contract and inheritance, which have been specifically made by the regulations, in addition to, or explanation of, the laws and established usages of the country; as well as the rules, not included in the present section, which are more remotely connected with the administration of civil justice; it remains only to observe, that all covenanted servants of the Company, employed in the judicial department, civil or criminal, are, in common with those employed in the collection of the public revenue, prohibited from "lending" money, directly or indirectly, to any proprietor or farmer of land, or dependant talookdar, or under-farmer or ryot, or their sureties; and all such loans as have been made in opposition to the repeated prohibitions of government, or which may be hereafter made, are declared not recoverable in any court of judicature." They are also, in common with all Europeans, "of whatever nation or description" forbidden to "purchase, rent, or occupy, directly or indirectly, any land out of the limits of the town of Calcutta without the sanction of the Governor General in Council;" and all persons holding land, in opposition to this prohibition,

R. XXXVIII, 1793.
R. XLVIII, 1795.
R. XIX, 1803. Prohibition to Company's servants, employed in the judicial, or revenue, department, from lending money to landholders, farmers, under-tenants and cultivators; or their sureties.

Also (in common with all Europeans) from purchasing, leasing, or occupying land, out of Calcutta, without the sanction of Government.

are

* The provincial, zillah, and city courts have been furnished, by the sudder dewanry adawlut, with forms for the monthly reports of decided causes, and half yearly reports of depending causes, required by the regulations; and were instructed (on the 25th July 1798) to explain the reason of more causes not having been determined, whenever the number decided on trial (viz. exclusive of nonsuits upon default, and adjustments by razeenamahs) either by the judges, or registrars, may be less than ten; in fixing which limitation, the court observed "they had not considered the total number of decisions to be expected monthly; but had regard, as well to the time occasionally occupied in the investigation of particular causes, as to other accidental circumstances which may sometimes prevent a greater number of decisions; and which the court are always ready to admit in explanation of even a less number; provided such circumstances be stated for their information." The following statements of the number of causes decided on investigation, dismissed on default, or adjusted by the parties, in the several civil courts of Bengal, Behar, Orissa, and Benares, during the year 1804, and of the number of original causes and appeals depending on the 1st January 1805, will afford a general and satisfactory view of the actual administration of civil justice in these provinces. The number of original causes and appeals, which were determined in the several provinces during the year 1804, is not less than 1,000,000; and a statement is submitted of the number depending on the 1st January 1805.

are declared " liable to be dispossessed of the land at the discretion of the Governor General in Council ; nor shall they be intitled to any indemnification for buildings which they may have erected ; or other account." Both of these restrictions were included in the judicial regulations passed on the 5th July 1781, and the revenue regulations passed on the

Statement of suits, decided or dismissed in the several zillah and city courts of Bengal, Bahar, Orissa, and Benares, during the year 1804, or adjusted by the parties.

BEFORE THE JUDGES.			
Decided or dismissed	6940.	Adjusted by the Parties	725.
		Total	766
BEFORE THE ASSISTANT JUDGES (of zillahs Behar, Hoogly, Fitchet, and city of Patna.)			
Decided or dismissed	879.	Adjusted by the Parties	45.
		Total	924
BEFORE THE REGISTERS.			
Decided or dismissed	8433.	Adjusted by the Parties	1347.
		Total	9780
BEFORE THE HEAD NATIVE COMMISSIONERS.			
Decided or dismissed	6387.	Adjusted by the Parties	2439.
		Total	8826
BEFORE THE OTHER NATIVE COMMISSIONERS.			
Decided or dismissed	95208.	Adjusted by the Parties	1,55,971.
		Total	2,51,179
Total of causes decided, dismissed, or adjusted in the year 1804.			2,76,335

Appeals decided, dismissed, or adjusted, in the provincial courts of appeal, and in the Sudder dewanny adawlut, during the year 1804.

	Decided or dismissed.	Adjusted	Total.
Benares provincial court,	61	0	61
Calcutta ditto,	223	4	227
Dacca ditto,	138	14	152
Moorshedabad ditto,	189	4	193
Patna ditto,	115	7	122
<hr/>			
Sudder dewanny adawlut	726	29	755
	51	0	51
<hr/>			
Total of appeals decided, dismissed, or adjusted in the year 1804.	777	29	806

Statement of suits depending in the zillah and city courts of Bengal, Bahar, Orissa, and Benares, on the 1st January 1805.

Before the judges,	12,748
Before the assistant judges,	935
Before the registers,	10,867
Before the head native commissioners,	6,558
Before the other native commissioners,	95,366
Total of causes depending in the zillah and city courts.	1,26,475

Appeals depending before the provincial courts of appeal, and Sudder dewanny adawlut, on the 1st January 1805.

Benares provincial court,	31
Calcutta ditto,	323
Dacca ditto,	540
Moorshedabad ditto,	44
Patna ditto,	228
<hr/>	
Court of Sudder dewanny adawlut,	323
Total of appeals depending in the provincial courts and Sudder dewanny adawlut,	1,200

Statement of original suits with appeals depending in the zillah and city courts of Bengal, Bahar, Orissa, and Benares, on the 1st January 1805.

In the zillah courts,	2,76,335
In the provincial court,	1,200
Total depending on the above date.	2,77,535

8th June 1787; as well as in the code enacted on the 1st May 1793.* The policy of the former rule, which restricts the judicial and revenue officers from being engaged in money transactions with persons under their immediate authority, is obvious: and the object of it is stated in the preamble to Regulation XXXVIII, 1793, "to guard against the abuses, "that the powers, with which they were invested, would "have enabled them to practice, had they been permitted "to engage in such transactions with individuals subject to "their official control." The latter provision is further stated to have been made "from a regard to the prejudices of the "natives; with a view to promote their ease and happiness; "and to obviate the evils that would necessarily have resulted "from allowing any persons, not amenable to the provincial "courts of judicature, to purchase or rent estates, without restriction or limitation."

Policy and object of these restrictions.

To the system thus established in 1793, for administering civil justice in the British provinces of Bengal, Bahar, and Orissa; extended in 1795, to the province of Benares; and adopted in 1803, with the additions and amendments suggested by an experience of ten years, for the provinces ceded by the Nuwab Vizeer; as well as, more recently, for the territory ceded by the Peshwa, by Doulut Rao Sendheeah, and by the Rajah of Berar; it is impossible to apply any

General remarks on the system of civil justice established in 1793; and since extended to Benares, and the ceded and conquered provinces.

* By the 20th article of the judicial regulations passed on the 5th July 1781, and the same article of the regulations passed on the 27th June 1787, the courts of judicature were prohibited from adjudging the amount of any debt contracted by a landholder paying revenue to government without the sanction of the committee or board of revenue, and a registry of it in the canoongo's office; or although so registered, if the debt were contracted with any European; or with any native officer employed in the collection of the public revenue. In the appeal of *Rajah Mohunmud Zuman Khan versus Mr. R. GALT*, decided by the sudder dewanny adawlut in the month of October 1796, it was declared by the court, that the rule referred to, in the 20th article of the Regulations of 5th July 1781, and 27th June 1787, though repealed as far as respects the sanction of the board of revenue by Section LXVII, Regulation VIII, 1793, (which enacts "that all actual proprietors of land, and dependant talookdars, are to be held to "have been at liberty from the 29th October 1790, to borrow money without the sanction of "the board of revenue;") and virtually, as far as regards Europeans not employed in the administration of justice, or the collection of revenue, by Regulation XXXVIII, 1793, (which prohibits Europeans of these descriptions from lending money to landholders, and refers to other Europeans not prohibited) must be still considered applicable to all debts contracted, and engagements entered into, whilst it was in force; unless otherwise directed by any subsequent rule, as in the instance noticed, in which the retrospective repeal of the restriction upon proprietors of land in borrowing money without the consent of the board of revenue being expressly limited to the 23d October 1790, (the period of the permanent settlement of the land revenue) it must be considered in force to that date.

observation more appropriate, or more just, than the prof-
 pective remark of the Noble Marquess by whom it was
 founded, contained in the following extract from the pream-
 ble to Regulation III, 1793. " A system for the administra-
 " tion of the laws and regulations, so constituted, will contain
 " an active principle, which allowing for the various charac-
 " ters and dispositions of those who may be employed in
 " the immediate conduct of it, must continually operate to the
 " important ends of compelling men to be just in their deal-
 " ings with each other; bringing into action that spirit of in-
 " dustry which is implanted in mankind; and which exerts
 " itself in proportion as individuals are certain of enjoying
 " the fruits of it; dispensing prosperity and happiness to the
 " great body of the people; and increasing the power of the
 " state, which must be proportionate to the collective wealth
 " that, by good government, it may enable its subjects to
 " acquire." That the expectation thus expressed, of the
 operative and beneficial tendency of the system introduced,
 in 1793, has been amply realized, can need no other testimo-
 ny than what has been quoted, in the introduction to this
 analysis, from the late collegiate discourse of His Excellency
 the present Governor General; who has augmented the bene-
 fits of it, as well by supplying unavoidable deficiencies in the
 original regulations, as by enlarging the sphere of their
 efficiency over the wide, fertile, and populous accessions of
 territory, obtained for the East India Company and Crown of
 Great Britain, by wisdom, energy and valour, under His
 Lordship's vigorous and eventful administration*.

The expectation
 of Marquess
 Cornwallis
 fully realized.

Benefits of the
 system aug-
 mented by
 Marquess
 Wellesley.

* In the marginal notes to the subsequent parts of this work B. R. will distinguish the regulations *specifically* enacted for the province of Benares; and C. R. the regulations enacted for the *ceded or conquered* provinces only. The want of this distinction in the two preceding sections may be partly supplied by observing, that all the Regulations of 1795, from I. to XXXIV, and from XLII to LI, as well as LIV and LX, relate exclusively to Benares; and that the regulations of 1803, from I to XLVII, as well as LI and LII, had exclusive reference to the provinces ceded by the Nuwab Vizeer, till they were extended to the territory ceded by the Peshwa and Doulut Rao Scindheeah. In binding up the regulations, it is convenient to let these special rules, for Benares and the ceded provinces, form two supplementary volumes, by which means they are kept distinct from the general code.

SECTION III.

SUBJECTS CONNECTED WITH CIVIL JUSTICE.

TO promote the circulation of money, and encourage commerce, it has, in almost all countries, been deemed expedient to sanction by law the receipt of a just consideration for the use of money, proportioned to its actual value or price; which depends upon the quantity of current specie and the general demand for it; and to the risk incurred in lending it; subject to penalties for excessive and illegal interest, or, as commonly denominated, usury.* But the Mahomedan law, which in this and other instances is borrowed from the Mosaic, forbids the taking of interest for the use of money, upon loans from one Musulman to another, and has not regulated the rate of it, when allowed to be taken from a hostile infidel.† The Hindoo law permits interest to be taken (with some exceptions) and has prescribed the rates to be received with, or without, a pledge, or surety. But the legal rates vary according to the cast, or class, of the borrower; as well as under other circumstances of time and place; and a considerable difference of construction has been given, by the

General principles of laws of interest and usury.

Mahomedan law respecting interest.

Hindoo law.

* Vide BLACKSTONE, Vol. II, page 454. He remarks "that the exorbitance or moderation of interest for money lent depends upon two circumstances; the inconvenience of parting with it for the present; and the hazard of losing it entirely. The inconvenience to individual lenders can never be estimated by laws; the rate therefore of general interest must depend upon the usual or general inconvenience. This results naturally from the quantity of specie or current money in the kingdom. But in this case, it seems to be the general demand for money, by those who want it, rather than the inconvenience of parting with it, to those who possess it; which regulates, or ought to regulate, the rate of legal interest. It has been questioned indeed whether any limitation of interest (though in policy, be fixed by law; but the laws of England have made the lender at illegal interest liable to a penalty of treble the amount of the sum lent; besides declaring void all usurious bonds, contracts, and assurances; and their commentators, distinguishing between a moderate and exorbitant profit; to the former of which we usually give the name of interest; to the latter the truly odious appellation of usury," observes that "the former is necessary in every civil state, if it were but to exclude the latter, which ought never to be tolerated in any well regulated society."

† See HAMILTON's translation of the Hedaya, Vol. II, chapters on "Ribba, or usury" and "first sales."

Custom of India.

Necessity of a general rule for the limitation of interest.

Rates established in 1772.

And provisions then made for forfeiture of illegal interest.

As well as of the principal in cases of evasive deduction.

commentators upon the Hindoo law of contracts, to the texts which respect the limitation of interest, and the invalidity, or immorality only, of usurious loans and engagements.* Moreover, the Hindoo legislators have expressly sanctioned, and the Musulman governments of India appear to have tolerated, directly or indirectly, the *customary interest* of the country; which, in the plan for the administration of justice proposed by the committee of circuit in the year 1772, is stated to “have amounted to the most exorbitant usury” It was therefore judged necessary to prescribe a fixed and general rule for the limitation of interest, to be received and paid, in all cases of loan and debt; and the eighteenth article of the plan abovementioned established the following rates, “as well for past debts, as on future loans of money; “viz. on sums not exceeding one hundred rupees principal, “an interest of three rupees two annas per cent per mensem, “or half an anna in the rupee: on sums above one hundred “rupees principal, an interest of two rupees per cent per “mensem. The principal and interest to be discharged according to the condition of the bond: and all compound “interest, arising from intermediate adjustments of accounts, “to be deemed unlawful and prohibited.” It was further provided (by the 18th and 19th articles) that “when a debt “is sued for upon a bond, which shall be found to specify “a higher interest than the established rates, the interest shall “be wholly forfeited to the debtor, and the principal only “be recoverable; and that all attempts to elude this law, by “deductions from the original loan under whatever denomination, shall be punished by a forfeiture of one moiety “of the amount of the bond to government and the other

* The provisions of the Hindoo law on loans, interest, and pledges, are fully stated in the three first chapters of Mr. COMBES'S translation of the digest on contracts and successions, compiled under the superintendence of the late Sir W. JONES, and commented upon by JAGANNATHA TERCAPANCHANANA, an eminent Pandit, who is still living, at the advanced age of one hundred and eight years, and resident at Tirumy, about thirty miles from Calcutta; where, surrounded by four generations of his descendants, in number nearly an hundred, he continues to give daily lectures to his pupils upon the principles of law and philosophy.

Also for attestation of bonds.

Qualification, and further provisions, in regulations of 28th March, 1781.

Similar provisions, with modification respecting bonds, in regulations of 5th July, 1781.

Supplementary article, respecting mortgages 13th June 1783.

“ half to the debtor.” Also that “ all bonds shall be executed in the presence of two witnesses.” These provisions were continued in the 22d and 23d articles of the judicial regulations passed on the 28th March 1780, with the following qualifications. “ In cases of future loans, no higher interest to be allowed than two per cent per mensem, or twenty four per cent per annum, where the principal shall be under one hundred rupees: and one per cent per mensem, or twelve per cent per annum, where the principal shall exceed one hundred rupees. It shall be further in the discretion of the superintendent of the dewanny adawlut, in cases of past loans, on a review of the circumstances of the debt, and condition of the debtor, to settle the payment of the debt according to a known and established custom of the country; namely, where the interest has accumulated so as to exceed the principal, to reduce it to one half of the principal, or where the interest has exceeded one half of the principal to reduce it to a quarter. That all bonds shall in future be executed in the presence of two subscribing witnesses; this is not however to apply to bills of exchange, receipts, or notes of hand, in which the custom of the country is to be referred to and abided by.” Provisions to the same effect, with a modification to admit of a judgment upon bonds, though not proved by two witnesses, on proof of payment of the amount, or the receipt of some other valuable consideration, were included in the 21st, 22d, and 25th articles of the regulations of the 5th July 1781; and in the 15th article of the printed supplement thereto, it is stated, that “ the judge of the mofussil dewanny adawlut of Patna having represented to the Governor General and Council, that there were numerous complaints brought before him for debts due on mortgage bonds; by enquiry into which, the receipts from the subject mortgaged often appeared to have more than doubled the original loan: he considered these as cases of such hardship, as to request the honorable board’s instructions

“ instructions how to proceed relative to them, as such practices, however conformable to the custom of the Bahar province, appeared to him in the light of a palpable evasion of the 21st article of the regulations; wherefore he proposed that only the same interest should be allowed on mortgage bonds, that is, by the abovementioned article of the code, allowed on other bonds, and that the mortgaged property should be redeemed whenever the original, with the simple interest arising thereon, should be or have been discharged by the mortgagee; which propositions having, on the 13th June 1783, met with the honorable board's approbation, the judge was directed to act accordingly; and this is therefore to be considered as a general rule throughout the provinces.”

Section XXI,
of regulations
passed 27th June
1787, annulled
19th August
1789.

Alterations
made in October
1790, since
more fully pro-
vided for.

Uniform rate
of interest fixed
at 12 per cent
from 1st January
1793.

It is unnecessary to specify Section XXI, of the revised regulations for the civil courts, passed on the 27th June 1787; as it was annulled, and the 21st article of the former regulations of 5th July 1781 restored, on the 19th August 1789. It is also immaterial to notice the alterations made in the former rules, respecting interest and mortgages, by the resolutions of government under dates the 28th, 29th, 30th, and 31st October 1790; as they have been since more fully provided for. But it is requisite to add, as preliminary to the existing rules, that by a regulation passed on the 23d November 1792, it was enacted that, from the first day of January 1793, the limitation of interest, upon all debts or other causes of action arising subsequently to that date, should be fixed at the rate of twelve per cent per annum, whether the principal amount be more or less than one hundred sicca rupees.*

Foregoing recital
preliminary to Regula-
tion XV, 1793.

THE foregoing observations and recital have been stated for the purpose of explaining the provisions contained in Regula-

* Twelve per cent per annum is also the limitation of interest, to British subjects in the East Indies, fixed by the Statute 13, G. III. Cap. LXIII, § XXX, from the 1st August, 1774: under penalty of forfeiting treble value of any loan at higher interest, direct or indirect, with costs, besides making void all bonds, contracts and assurances, executed after the above date, for the principal.

tion XV, 1793, for fixing the rates of interest (to be adjudged) on past and future loans, in Bengal, Bahar, and Orissa; the several sections of which from II to XI, in consideration of their importance and penal operation, are subjoined *verbatim*.

Declaring rates of interest to be adjudged on past and future loans, in Bengal, Bahar, and Orissa.

II. " If the cause of action shall have arisen before the twenty-eighth day of March, one thousand seven hundred and eighty, the courts of civil judicature are not to decree higher or lower rates of interest than the following: On sums not exceeding one hundred sicca rupees, three rupees and two annas per cent per mensem, or thirty-seven rupees and eight annas per cent per annum; on sums exceeding one hundred sicca rupees, two per cent per mensem, or twenty-four per cent per annum."

Section II, of that regulation. Rates of interest before 28th March 1780.

III. " If the cause of action shall have arisen at any period between the twenty-eighth day of March, one thousand seven hundred and eighty, and the first day of January, one thousand seven hundred and ninety three, no higher or lower rates of interest than the following are to be decreed: On sums not exceeding one hundred sicca rupees, two per cent per mensem, or twenty-four per cent per annum; on sums exceeding one hundred sicca rupees, one per cent per mensem, or twelve per cent per annum."

Section III. Rates of interest from 28th March 1780 to 1st January 1793.

IV. " If the cause of action shall have arisen on or after the first day of January, one thousand seven hundred and ninety three, the courts are not to decree any interest, on any sum whatever, above the rate of twelve per cent per annum."

Section IV. Rate of interest from 1st January 1793.

V. " If in any of the cases specified in Sections II, III, and IV, a lower rate of interest, than any of the rates therein authorized to be awarded, shall have been stipulated between the parties, no higher rate of interest than the rate so stipulated is to be decreed."

Section V. Provision, if less than the authorized rates be stipulated.

Section VI.
What judgment
to be given,
when accumu-
lated interest
may exceed the
principal.

VI. " If the interest on any debt, calculating according to the rates allowed by this regulation, shall have accumulated so as to exceed the principal, the courts are not, in any case whatever (excepting the cases specified in Section XII,) to decree a greater sum for interest than the amount of such principal. *

Section VII.
In what cases
only, com-
pound interest
to be allowed.

VII. " THE courts are not to decree any compound interest, arising from intermediate adjustments of accounts. This rule however is not to extend to cases in which accounts between the parties shall have been adjusted, and the former bonds or agreements cancelled, and new bonds or agreements taken for the aggregate amount of the principal and the legal interest remaining due upon the adjustment, consolidated into principal."

Section VIII.
Interest forfeit-
ed, if the pre-
scribed rate be al-
lowed.

VIII. " THE courts are not to decree any interest whatever, in any case where the bond or instrument given for the security and evidence of the debt shall have been granted on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, and shall specify a higher rate of interest than is authorized by this regulation to have been given and received subsequent to that date."

Section IX.
Forfeiture of
principal and
interest in cases
of evasive de-
duction, or o-
ther device.

IX. " NOR to decree any interest whatsoever in favor of the plaintiff, in any case where the cause of action shall have arisen on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, where a greater interest, than is authorized by this regulation, shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment, but for the dismissal of the suit, with costs to be paid by the plaintiff."

* This provision has no reference to the interest upon sums adjudged, which is authorized and directed by Section III, Regulation XIII, 1796, when a judgment appealed from may be confirmed.

X. " In cases of mortgages of real property, executed prior to the twenty-eighth day of March, one thousand seven hundred and eighty, in which the mortgagee may have had the usufruct of the mortgaged property, whether he shall have held it in his own possession or not, the usufruct is to be allowed to the mortgagee in lieu of interest, agreeably to the former custom of the country, (provided it shall have been so stipulated between the parties) until the abovementioned date; subsequent to which the same interest to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property which have been entered into on or since that date, or that may be hereafter executed, as is allowed on other bonds, which have been or may be granted on or posterior to such date, and no more; and all such mortgages are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, or otherwise liquidated by the mortgager."

Section X. Usufruct in lieu of interest, allowed in mortgages prior to 28th March, 1783.

But mortgage bond, subsequent to that date, subject to the time limitations of interest, as other bonds.

And mortgage to be considered redeemed, on receipt of the principal and simple interest from the usufruct.

XI. " For the adjustment of accounts in the cases of mortgages specified in Section X, where the mortgagee shall have had the usufruct of the mortgaged property, the mortgagee is to be required to deliver in the accounts of his gross receipts from the property mortgaged, and also of his expenditures for the management or preservation of it. The mortgagee is to swear, or (if he be of the description of persons whom the courts are empowered to exempt from taking oaths) to subscribe a solemn declaration, that the accounts which he may deliver in are true and authentic. The mortgager is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce respecting them, the court is to adjust the account."

Section XI. Accounts to be delivered by the mortgagee, and adjustment to be made by the court, in the cases last mentioned.

Section XII.
Exception of
respondentia
loans and poli-
cies of insur-
ance, from
preceding rules.

XII. “ THE rules contained in the preceding sections are not to be considered to extend to respondentia loans, or policies of insurance; the interest on which is to be regulated by the terms of the deeds, and the laws and usages which prevail respecting such transactions.”

R. III. 1793.
§ XV Evidence
to be required,
in giving judg-
ment upon
bonds, execu-
ted after 28th
March 1780.

By Section XV, Regulation III, 1793, the provision before in force, respecting the evidence required for the proof of bond debts, was continued in the following terms.

“ The zillah and city courts are prohibited decreting the
“ payment or satisfaction of any sum due on a tamassook or
“ bond, which may have been entered into after the 28th
“ March 1780, unless the bond shall be proved to have been
“ executed in the presence of two credible witnesses, or the
“ payment of the sum demanded on the bond, or some other
“ valuable consideration for it having been received, shall be
“ proved to the satisfaction of the court. But the restriction
“ contained in this section is not to extend to any bills of
“ exchange, receipts, or notes of hand; in the determination
“ on which the custom of the country is to be abided by.”

But restriction
not to include
bills of ex-
change, re-
ceipts, or notes
of hand.

This rule was extended to the province of Benares, with respect to bonds executed after the 1st July 1795, by Section IX, Regulation VII, 1795; with an additional restriction that it should not be applied to “ the dealings and money transac-
“ tions amongst mahajuns and shroffs; in which the establish-
“ ed customs observed and enforced amongst them are to be
“ adhered to by the courts in their inquiries and decisions.”

B. R. VII,
1795, § IX.
Above rule,
concerning
bonds, extended
to Benares, with
a further excep-
tion of the
money trans-
actions of
bankers.

Established cus-
tom applicable
to all money
transactions in
Benares, for
which no spe-
cific rule has
been prescribed.
R. XV. 1793.
not extended
to that place.
The Government
has directed
that the rule
of R. I,
1793.

The spirit of this provision must also be deemed applicable to all money transactions in the province of Benares, for which no specific rule has been prescribed; and as Regulation XV, 1793, has not yet been extended to that province, the penalties for usury enacted by it can at present be enforced by the Benares courts of justice, as far only as they may be conformable to the known law and usage of that province. Regulation I, 1793, framed “ to prevent fraud and injustice

“ in

“ in conditional sales of land under deeds of *Bye-bil-wuffa* or other deeds of the same nature.” is however expressly declared to extend to Benares, as well as to the provinces of Bengal, Bahar, and Orissa; and from the terms of it, hereafter cited, must be considered to have established, since its publication in the former province, the general limitation of interest, at “ the legal rate of twelve per cent per annum.”

UNDER the prohibition of the Mahomedan law, against the taking of interest upon money lent; as well as for the greater security of money lenders, whether Hindoo or Mahomedan, by having a pledge equivalent, or superior in value, to the sum advanced by them; it has long been a prevalent practice to borrow money on the mortgage, and conditional sale, of landed property, under a stipulation, that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer is usually denominated *Bye-bil-wuffa* (conditional sale, or sale to be completed) in the province of Bahar, where it is most frequent; and is also common in Bengal, under an instrument termed *Kut Cubaleh*. The promulgation of Regulation XV, 1793, increased the prevalence of this transaction, with a view to avoid the limitations of interest; and instances occurred, in which persons lending money on *Bye-bil-wuffa*, in order to render the sale absolute, denied the tender, or evaded receiving payment of the money due to them, within the period limited for the discharge of it. In such cases the proof of the tender falls upon the borrower; and if he fail, from want of legal evidence, he is liable to lose his estate. It was therefore necessary, for the security of the borrower in such transactions, that he should have the means of establishing before the courts of judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender; and the following rules were enacted by the regulation abovementioned for this purpose.

Preamble to
R. I, 1798.
Prevalence of
conditional
sales of land,
upon loans, un-
der deeds of
Bye-bil-wuffa, or
Kut Cubaleh,
and necessity of
provisions rel-
ieving them.

R. I. 1798.

§ 11.

Borrower in such
cases how to pro-
ceed for the re-
demption of
his lands with-
in the stipulated
period.

II. " In all instances of the loan of money on Bye-bil-waffa, or on the conditional sale of landed property, however denominated, the borrower, who may be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon, within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him; taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied; or, without any tender to the lender, to deposit the amount due to him, on or before the stipulated date, in the dewanny adawlut of the city or zillah in which the land may be situated; and the judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date, and for what purpose, such deposit may have been made. He shall also, at the same time, cause a written notice of such deposit to be delivered to the lender; and on the application of the latter, and his surrender of the conditional bill of sale, or shewing satisfactory cause why it cannot be surrendered, shall pay him the amount deposited; and take his acknowledgement, to remain among the records of the court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows. When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent per annum; or if interest be payable, and no rate has been stipulated, with interest at the established rate of twelve per cent; but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession. In either case, a deposit made as above required, shall be considered to preserve to the borrower his full right of redemption; and if the land be in the possession of the lender, shall intitle him to demand the

immediate

immediate recovery thereof, subject to the adjustment of accounts specified in the following section. Provided however, that if the borrower, in any case, shall deposit a less sum than above required, alleging that the sum so deposited is the total amount due to the lender, for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received; and notice given to the lender as above directed; and if the amount so deposited be admitted by the lender, or be established on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower; who will not however, in such cases, be intitled to the recovery of his lands, until it be admitted, or established, that he has paid the full amount due from him."

III. " In all instances wherein the lender on a Bye-bil-wuffa, or similar conditional sale, may have been put in possession of the land, and an adjustment of accounts may consequently become necessary between him and the borrower, the lender is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed, with regard to mortgages and interest, in Regulation XV, 1793, as far as the same may be applicable to the nature of the case. But such part of Section X, of the above regulation, as directs that the mortgages therein referred to are to be considered as cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this regulation, it is declared not to apply thereto."

Section III
The lender to account for the proceeds of the estate whilst in his possession, on the principles prescribed in R. XV, 1793, as far as applicable.

But redemption from the usufruct, provided for by Section X of that regulation, inapplicable to the conditional sales here referred to

IV. " A *teep*, for the repayment of money lent on the conditional sales referred to in this regulation, shall not be considered a legal tender, unless accepted as such by the lender;

§ IV.
Teeps, or notes of bankers, not to be considered a legal tender, unless accepted

as such by the lender.

lender; the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgment that he has received back the money lent by him."

§ V.
These provisions not meant to alter any terms of contract settled between the parties, illegal interest excepted.

V. "NOTHING in this regulation being intended to alter the terms of contract settled between the parties, in the transactions to which it refers, (illegal interest excepted) the several provisions in it are to be construed accordingly; and any question of right between the parties is to be regularly brought before, and determined by, the courts of civil justice."

C. R. XXXIV, 1803.
Rules fixed, relative to mortgages, conditional sales, limitations of interest, and usury, re-enacted for ceded provinces, with qualifications.

Rates of interest, before 10th November 1801.

Limitation of interest to 12 per cent after that date.

Rules of foreclosure to have operation from 1st January 1801.

THE whole of the foregoing provisions, relative to mortgages and conditional sales of land, as well as the limitations of interest and penalties for usury, contained in Regulation XV, 1793, have been re-enacted for the ceded provinces, by Regulation XXXIV, 1803; with the under mentioned qualifications. If the cause of action shall have arisen before the 10th day of November 1801, the courts of judicature are not to decree higher rates of interest than the following, viz. on sums not exceeding one hundred sicca rupees, two rupees eight annas per cent per mensem, or thirty per cent per annum; on sums exceeding one hundred sicca rupees, two per cent per mensem, or twenty four per cent per annum. If the cause of action shall have arisen on or subsequent to the 10th November 1801, the courts are not to decree interest on any sum whatever, above the rate of twelve per cent per annum. The rule against any judgment for interest, when the bond or other instrument shall specify more than the authorized rate, is restricted to instruments granted on, or subsequent to, the 1st day of January 1801; and the further rule for dismissing the claim to principal as well as interest, with costs, on proof of any attempt made to elude the prescribed rates of interest, by a deduction from the loan or other device, is also confined to cases in which the cause of action shall have arisen on or subsequent

subsequent to, the above date. In consideration of the former custom of the country, which allowed the usufruct of lands to be received in lieu of interest, provision likewise made for the continuance of such custom to the 10th November 1801, (the time of cession to the Company) after which, as in the other provinces, all pledges of land, or other real property, for the payment of money, which may not have been mortgaged with an eventual condition of sale, under deeds of Bye-bil-wuffa, or any similar denomination, are to be considered as virtually cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct*." It may be proper to add that the rule of evidence which has been noticed, respecting bonds, does not appear to have been enacted for the ceded provinces. But the omission cannot be of consequence under the general provision, that in cases for which no specific rules may exist, the judges shall act according to justice, equity, and good conscience†.

Usufruct allowed to mortgagors till the 10th November 1801.

All pledges since that date, without a condition of sale, redeemed from the usufruct as in other provinces.

THE

* The distinction between a *vinculum reale*, or living pledge, and *mutuum radum*, dead pledge, or mortgage, stated in the second volume of BLACKSTONE'S commentaries, Book II, Chapter X, is consequently applicable to all pledges of land without a condition of sale; in opposition to those which are mortgage with such condition. But the equity of redemption, allowed by the English courts of equity, "though a mortgagee be forfeited, and the estate absolutely vested in the mortgagee by the common law, if the estate be of greater value than the sum lent thereon," whereby the mortgagor is permitted, "at any reasonable time, to recede or redeem his estate, paying to the mortgagee his principal, interest, and expenses," has not yet been extended to Indian landholders, who may have mortgaged and conditionally alienated their lands, under deeds of Bye-bil-wuffa, Kut-Cubalch, or other designation. The stated conditions of such deeds, and the established practice of the country, in construing them, upon failure, to convey an absolute sale to the mortgagee, have probably operated against the introduction of this "reasonable advantage allowed to mortgagors" in England, but, if accompanied with the same restrictions (whereby "the mortgagee may either compel the sale of the estate in order to get the whole of his money immediately; or call upon the mortgagor to redeem his estate presently, and in default thereof, to be for ever foreclosed from redeeming it;") a similar prospective means of equitable redemption, within a limited period, would not perhaps be unjust towards the lenders of money upon mortgages in India; and considering the improvident disposition and habits of many descriptions of borrowers, might be perfectly just and expedient, for the very reason given for it by BLACKSTONE; who observes, that "otherwise in strictness of law, an estate worth one thousand might be forfeited for non-payment of one hundred pounds, or a less sum."

† By a regulation lately passed and numbered VIII, 1805, the rule referred to has been extended to the ceded and conquered provinces, together with such part of Regulation

R. XI, 1797.
R. R. XLIV.
1795.
R. X, 1800.
Hindoo and
Mahomedan
laws of inher-
itance

Custom in divi-
sion there-
from, whereby
particular estates
were kept un-
divided.

Origin of this
custom.

Reasons for dis-
continuance of
it.

THE Hindoo and Mahomedan laws of inheritance functioned, and prescribe a division of patrimonial property amongst sons and other legal heirs, when they may require a partition, in preference to keeping the estate, for their common benefit, under the management of the elder brother, or other principal representative of the family*. But a custom, the reverse of that of gavelkind in England, was established in the provinces of Bengal, Bahar, and Orissa, before their subjection to British authority; whereby some of the most extensive zemindaries, or land tenures in chief, on the death of the possessor, devolved entire to his eldest son; or other nearest of kin, to the exclusion of the younger sons, and other legal heirs, who were intitled to a suitable maintenance only. This custom may have originated in the indivisible nature of the Hindoo principalities, antecedent to the Mosulman conquest; or in considerations of policy and convenience, consequent to that conquest; such as introduced the impartible feudal tenures in Europe, and their descent to the eldest son only†. The reasons for it, whatever they might have been in former times, had however ceased to operate; especially under the declaration of the proprietary rights of zemindars, and other landholders, made by the proclamation contained in Regulation I, 1793; and the limitation of the public assessment upon lands, declared by the same proclamation to be fixed in perpetuity. A continuance of the usage in question was also deemed unfavorable to the general im-

lation XLIX, 1803, as had not been previously included in the regulations for those provinces. The limitation of causes referable to the zillah registers, and of appeals from the decisions of the zillah judges, is consequently now the same throughout the whole of the territories under the presidency of Fort William. The zillah of Paniput, comprising the city of Dehli and its vicinity on the right bank of the Jumna, is however excepted, by Regulation VIII, 1805, from the operation of all regulations which may not be expressly declared to extend to it, upon an obvious principle of policy and consideration towards the unfortunate representative of the royal house of TIMOOR.

* For the Hindoo rules of succession, consult the institutes of MANU translated by Sir. W. JONES, and the 3d and 4th Volumes of the digest of Hindoo law already mentioned. The Mahomedan law of inheritance is stated and explained in the translation of *Al Sirajyyah* and its commentary, by Sir. W. JONES.

† Vide BLACKSTONE, Vol. II, page 215.

provement

placement of landed property " from the proprietors of
 " these large estates not having the means, or being unable
 " to bestow the attention, requisite for bringing into cultiva-
 " tion the extensive tracts of waste land comprised in them."
 It was therefore enacted by Regulation XI, 1793, that, after
 the 1st July 1794, " if any zemindar, independent talookdar,
 " or other actual proprietor of land, shall die without a will,
 " or without having declared by a writing, or verbally, to
 " whom and in what manner his or her landed property is
 " to devolve, after his or her demise, and shall leave two
 " or more heirs, who by the Mahomedan or Hindoo law
 " (according as the parties may be of the former or latter
 " persuasion) may be respectively intitled to succeed to a
 " portion of the landed property of the deceased, such persons
 " shall succeed to the shares to which they may be so intitled.

Provision for
 succession of all
 the legal heirs
 from 1st July
 1794.

PROVISION was at the same time made, by the abovementioned regulation, for allowing two or more persons, succeeding to an estate, either to hold it joint and undivided, under a common manager; or to obtain a division and separate possession of their respective shares, under the rules prescribed for the division of estates, paying revenue to government, in Regulation XXV, 1793. It was further provided, that nothing contained in Regulation XI, 1793, should be construed to intitle any person to the share of an estate held entire by any individual, or that might devolve entire to any individual prior to the 1st July 1794, under the custom for the future abolition of which that regulation was enacted. " Nor
 " to prohibit any actual proprietor of land bequeathing or transferring by will, or by a declaration in writing, or verbally,
 " either prior or subsequent to the 1st July, 1794, his or her
 " landed estate entire to his or her eldest son, or next heir, or
 " other son or heir, in exclusion of all other sons or heirs, or to
 " any person or persons, or to two or more of his or her heirs,
 " in exclusion of all other persons or heirs, in the proportions,
 " and

Further provision
 for joint
 tenancy, or
 division of estates.

Restriction.

Not meant to
 prohibit any
 legal bequests,
 in favor of one
 or more persons.

“ and to be held in the manner, which such proprietor may
 “ think proper: provided that the bequest or transfer be not
 “ repugnant to any regulations that have been or may be pre-
 “ scribed by the Governor General in Council, nor contrary to
 “ the Hindoo or Mahomedan law; and that the bequest, or
 “ transfer, whether made by a will, or other writing, or verbal-
 “ ly, be authenticated by, or made before, such witnesses, and
 “ in such manner, as those laws and regulations respectively
 “ do or may require.”

Jungul mehals
 of Midnapore,
 and other dis-
 tricts, excepted
 from preceding
 rules.

It having been since found that the succession to landed
 estates, situated on the hilly and woody frontier of Midnapore,
 and other districts (known under the denomination of jungul
 mehals *) has, for a long period, invariably devolved to a single
 heir; and this custom appearing to be founded in circumstan-
 ces of local convenience, which still exist; it is enacted by Re-
 gulation X, 1800, that “ Regulation XI, 1793, shall not be con-
 “ sidered to supersede or affect any established usage, which
 “ may have obtained in the jungul mehals of Midnapore and
 “ other districts, by which the succession to landed estates, the
 “ proprietor of which may die intestate, has hitherto been
 “ considered to devolve to a single heir, to the exclusion of
 “ the other heirs of the deceased. In the mehals in question
 “ the local custom of the country shall be continued in full
 “ force as heretofore; and the courts of justice be guided by it
 “ in the decision of all claims which may come before them
 “ to the inheritance of landed property situated in those me-
 “ hals.”

And local cus-
 tom to be con-
 tinued in these
 mehals.

Spirit of latter
 provision ap-
 plicable to any
 similar mehals
 in Benares.

THE spirit of this regulation, though not expressly extended
 to Benares, must be considered applicable to any mehals of the
 same description within that province, to which the provisions
 of Regulation XI, 1793, were extended by Regulation XLIV,

* Which may be freely translated “ forest lands;” though *Jungul* is commonly applied to
 any wild territory, or waste ground overrun with trees, brambles, or weeds; and *mehal* is a
 general term for any division of land, or article of the public revenue.

1795, from the commencement of the Fulliy year 1204. No similar rules have been enacted for the ceded provinces; and the custom intended to be abolished, or restrained by them, does not perhaps exist in those provinces to an extent requiring, in policy or justice, any alteration of the established principles of succession; whether depending upon written law, or upon immemorial prescription, the foundation of common law; which in England, "for the most part, settles the course in which lands descend by inheritance."*

Rules stated not enacted for ceded provinces, and probably not required therein

THE regulations which have been cited, for supplying ascertained defects in the Mahomedan and Hindoo laws relative to loans and interest; and for carrying them more completely into effect, by the discontinuance of a custom deviating from, if not repugnant to, their general principles, in particular cases of succession; with the provisions that will be specified in a subsequent part of this Analysis, for defining and securing the rights of landlords and tenants; comprise the whole of the rules which the British government has yet found it necessary to prescribe, in amendment of the established laws and usages of the country, upon matters of private contract and inheritance. What further remedial or supplementary laws may be required for the ends of civil justice, either as new circumstances arise to call for them, or as judicial experience, and a more perfect knowledge of the Hindoo and Mahomedan laws, may suggest, will, doubtless, be proposed by the courts of judicature, and adopted, if judged expedient, by government, in the mode provided for by the regulations quoted in the first section. That so small a pro-

Objections upon the few amendments made in the laws and usages of the country, in matters of contract and inheritance.

* As well as "the manner and form of acquiring and transferring property; the solemnities and obligation of contracts; the rules of expounding wills, deeds and acts of parliaments; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars which diffuse themselves as extensively as the ordinary distribution of common justice requires." Vide BLACKSTONE'S third introductory section on the laws of England; and particularly what relates to the unwritten or common law, as founded upon custom, general or special, and opposed to the *lex scripta*, or statute law.

portion of the numerous regulations passed in the course of twelve years, (since 1793) affects the laws and customs of the country, upon the two extensive legal heads abovementioned, must afford the strongest assurance to the people, that their present Governors have no desire to interpose their legislative powers in matters of private right and property without necessity for it; and will, it may be presumed, conciliate their minds to the ready acceptance of any emendatory acts of legislation, which may hereafter be found requisite. A practice, said to be of no long standing, amongst Mahomedans, of settling upon their wives a dower more than equal, in general, to the whole of their estates, whereby the children of a second wife, not endowed, and other dependant relatives, are deprived of any part of the inheritance, may perhaps require some modification of the Mosulman law; which considering *Mahr*, or dower, to whatever amount, as a debt contracted by the deceased, has made it payable from his estate, as far as there may be assets, in preference to any claim of inheritance from the legal heirs; who are consequently often left in distress. * To guard against frauds, and injury to the real heirs, under the Hindoo law, it may also be advisable to provide for the more strict observance of the “ notice to the “ king, “ or public magistrate, directed by that law in cases of adoption†; or for such other means as may be effectual to secure the object of such notice; publicity in the transaction to which it refers. For this purpose, it is further directed by the law, that “ he who means to adopt a son, must assemble “ his kinsmen” and the commentator (JAGANNA'THA) justly observes “ this is intended to shew that a son, known by kinsmen to have been adopted, shall take the inheritance and “ perform the *fraddha* (funeral obsequies) and the like; and “ they shall not molest him. The notice given to the king is

The Mosulman law of dower may require some modification, under a prevalent practice

and it may be advisable to provide for a more strict observance of the Hindoo law of adoption.

* Vide translation of the Hedaya, Book II, ch. 3. on the “ *Mahr*, or dower.”

† See the text of VASISH'THA “ on the son given “ page 320, vol. 3. of the translated digest of Hindoo law.

“intended for the same purpose.” These cases are noticed as having frequently attracted the attention of the sudder dewanny adawlut, in various causes which have come before that court. But a desire to obtain full information, and to ascertain what provisions would be most acceptable to the persons liable to be affected by them, has hitherto prevented the suggestion of any new rule, on either subject, for the consideration of the Governor General in Council.

Reason for not
introducing new
rules

DOUBTS having been entertained to what extent the judges of the zillah and city courts are authorized to interfere in cases wherein any of the native inhabitants may have left wills at their decease, and appointed executors to carry the same into effect; or may have died intestate, leaving an estate, real or personal: with a view to remove all doubts on the authority of the zillah and city courts in such cases, and to apply thereto, as far as possible, the general principle prescribed in Section XV, Regulation IV, 1793, viz. that in suits regarding succession and inheritance, the Mahomedan law with respect to Mahomedans, and the Hindoo law with regard to Hindoos, be the general rules for the guidance of the judges; the following rules were enacted by Regulation V, 1799; and have been re-enacted for the ceded provinces by Section XVI, Regulation III, 1803.

R. V, 1799.
C. R. III,
1803, § XVI.
Limitation of
interference of
the zillah and
city courts, in
the execution of
wills and id-
emnification to
the estates of
persons dying
intestate

§ II. “IN all cases of a Hindoo, Mussulman, or other person subject to the jurisdiction of the zillah and city courts, having at his death, left a will, and appointed an executor or executors, to carry the same into effect; and in which the heir to the deceased may not be a disqualified landholder, subject to the superintendence of the court of wards, under Regulation X, 1793, or any other regulation relative to the jurisdiction of the court of wards; the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust, according to the will of the deceased,

When a will
may be left, and
an executor ap-
pointed, and
the heir be not
subject to the
court of wards.

ceased, and the laws and usages of the country, without any application to the judge of the dewanny adawlut, or any other officer of government, for his sanction; and the courts of justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust, or otherwise; when they are to take cognizance of such complaint, in common with all others of a civil nature, under the general rule contained in Section VIII, of Regulation III, 1793; and proceed thereupon according to the regulations; taking the opinion of their law officers upon any legal exception to the executors; as well as upon the provision to be made for the administration of the estate, in the event of the appointed executor being set aside: and generally upon all points of law that may occur; with respect to which the judge is to be guided by the law of the parties, as expounded by his law officers; subject to any modifications enacted by the Governor General in Council, in the form prescribed by Regulation XLI, 1793."

When there may be no will; but the deceased may have left a son, or other heir, intitled to succeed to the whole estate.

§ III. "IN case of a Hindoo, Mussulman, or other person subject to the jurisdiction of the zillah or city courts, dying intestate, but leaving a son or other heir, who, by the law of the country, may be intitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or if under age, or incompetent, and not under the superintendence of the court of wards, his guardian or nearest of kin, who by special appointment, or by the law and usage of the country, may be authorized to act for him, is not required to apply to the courts of justice for permission to take possession of the estate of the deceased, as far as the same can be done without violence; and the courts of justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general regulations."

§ IV. " If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession; and the courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession, for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit be determined, to the other claimant or claimants who may be able to give such security; declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties; but to be considered merely as an administration to the estate for the benefit of the heirs, who may, on investigation, be found intitled to succeed thereto."

The same rule applicable to more heirs than one, of a person dying intestate, if they agree in the appointment of a common manager.

But in cases of disputed succession, security to be taken from the party in possession.

And, in default of security required, possession may be given to other claimants, under security, until the suit be determined.

§ V. " In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the judge, within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined; or, in the latter case, until the legal heir to the estate, or other person intitled to receive charge thereof as executor, administrator, or otherwise, shall attend and claim the same; when, if the judge be satisfied that the claim

In what cases the judge may appoint an administrator, for the care of an estate.

is well founded, or if the same be established after any enquiry that may appear necessary, the administrator appointed by the court shall deliver the estate to him, with a full and just account of all receipts and disbursements during the period of his administration."

Security to be
given by such
administrators;
and allowance
to be fixed for
them

§ VI. "IN all instances of an administrator being appointed under this regulation, he is, previously to entering upon the execution of his office, to give good security for the faithful discharge of his trust, in a sum proportionate to the extent thereof; and the judge appointing him is authorized to fix for him (subject to the approbation of the court of sudder dewanny adawlut, to whom a report is to be made in such instances) an adequate personal allowance, to be paid out of the proceeds of the estate; and to be a per centage thereupon, after deducting the expenses of management."

Judges how to
proceed, in
cases of persons
dying intestate,
and leaving
personal prop-
erty, to which
there may be
no claimant.

§ VII. "THE judges of the 'zillah or city courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property; and that there is no claimant to such property; are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person intitled to receive charge of his effects, to attend for this purpose. Such advertisement to be published on the spot where the property was found; at the dewanny adawlut cutcherry of the zillah or city; and, if ascertainable, at the dwelling place of the deceased; or if the deceased were an European, in the Calcutta Gazette; after which should any person attend and satisfy the judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him; on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months

months next ensuing, an inventory of the property, and report of the circumstances of the case, are to be transmitted to the Governor General in Council for his orders."

§ VIII. It is further provided, that nothing in the regulation above quoted "is to be understood to limit or alter the jurisdiction of the court of wards in the appointment of managers, or guardians, for the disqualified landholders described in Regulation X, 1793; or in any case wherein a special power may be vested in the court of wards by the above, or any other regulation." The court of wards, as constituted by Regulation X, 1793, for Bengal, Bahar, and Orissa, and Regulation LII, 1803, for the ceded provinces, being composed of the members of the board of revenue; whose duties will form part of the subject of the third part of this Analysis; it will be sufficient to notice here, that the superintendence of this court "extends to the persons and estates of all proprietors of entire estates, paying revenue immediately to government, who are or may be females, not deemed by the Governor General in Council competent to the management of their own estates, minors, idiots, lunatics, or others rendered incapable of managing their estates by natural defects or infirmities of whatever nature." But the superintendence of the court of wards is declared "not to extend to proprietors of estates not paying revenue immediately to government; nor to joint proprietors of estates paying revenue immediately to government, both or all of whom may not be of the descriptions specified." Joint proprietors of undivided estates, the whole of whom may not be disqualified by sex, minority, or otherwise, from the management of their lands, are required to elect a general manager; in the choice of whom the guardians of minors, lunatics, idiots, or others having guardians, are intitled to vote for their wards. It is also provided by Regulation I, 1800, that "in all cases of joint undivided estates

Reservation of the jurisdiction of the court of wards

Constitution of that court under R. X, 1793; and R. LII, 1803, for the ceded provinces.

To what persons and estates its superintendence extends.

To what proprietors of estates, its superintendence does not extend.

General manager to be elected by joint proprietors of undivided estates, the whole of whom may not be within the jurisdiction of the court of wards.

R. I, 1800, In what cases the zillah and city judges,

"tates

Under the control of the fudder dewanny adawlut, may appoint guardians for minor and other proprietors of the joint estate, not fully of age, the control of which would...

Rule to be observed in the selection of such guardians.

And what compensation to be paid for them, in cases requiring it.

Commission to be granted to such guardians; security to be given by them; and obligation to be executed by them.

Functions of guardians so appointed.

“ tates, when one or more of the proprietors shall die, leaving
 “ heirs who are under age, lunatics, or idiots; and without
 “ nominating by will, a guardian or guardians to the heirs;
 “ it shall be the duty of the judge, within whose jurisdiction
 “ such estate may be situated (or the principal part of it, in
 “ the event of its being situated in two or more jurisdictions)
 “ on the receipt of a report from the collector, or from any
 “ other person or persons interested in the welfare of the
 “ family of the deceased, stating the grounds on which he or
 “ they may consider the next of kin as unfit to be entrusted
 “ with the care of the person, or management of the estate,
 “ of the heir, to investigate the nature of the objections to the
 “ nearest of kin; and if satisfied, that they are well founded,
 “ the judge shall nominate some other person of character
 “ and respectability to act as guardian of the heir; reporting
 “ the circumstance in every instance to the court of fudder
 “ dewanny adawlut. In the selection of guardians to be ap-
 “ pointed under this regulation, the judge is to attend particu-
 “ larly to their capacity, character and responsibility; but the
 “ guardianship is in no instance to be entrusted to the legal
 “ heir of the ward, or other person interested in outliving
 “ him. It is expected that some friends of the family to the
 “ deceased will gratuitously discharge the trust of guardian;
 “ but if, on any occasion, it may become necessary to make a
 “ pecuniary compensation to the person appointed to act as
 “ guardian, the amount of such compensation is to be fixed
 “ by the judge on a due consideration of the circumstances of
 “ the case.” The guardians so appointed are to be furnished
 with a commission under the official seal and signature of the
 judge; previously to the delivery of which they are to give
 security for their appearance during the continuance of their
 trust; and are to execute a solemn obligation for the zealous
 and faithful discharge of it. They are to have the care of the
 persons, maintenance, and, if minors, the education, of their
 wards; are to vote in the election of a manager for the joint
 undivided

undivided estate; and are to receive from the latter such portion of the profits arising from the estate, as their wards may be entitled to, on a fair distribution. " If any person shall think himself aggrieved by any act done by any of the zillah judges in the exercise of the authority vested in them by this regulation; he is at liberty to state his complaint by petition, either to the judge in person, or to the court of sudder dewanny adawlut, and whenever any such complaint shall be made, the judge is to certify a copy of the petition, and of all his proceedings in the case to which it relates, to that court; who are authorized to confirm or rescind his decision as to them shall appear just and proper; and their judgment in all such cases is declared to be final." It has not been deemed necessary to extend the authority of the court of wards to the province of Benares. But the provisions above quoted from Regulation I, 1800, for the appointment of guardians by the courts of justice, were enacted for that province; as well as for Bengal, Bahar, and Oude. They have not however been yet re-enacted for the ceded provinces.*

Persons aggrieved by acts of the zillah (or city) judge in the exercise of his powers, are entitled to them, how to obtain redress.

With a view to give security, and prevent frauds, in the transfer of lands, houses, and other immovable property, by sale or gift; as well as in the mortgage, lease, or other assignment, of such property; and to afford all persons the means of guarding against litigation, respecting the authenticity of their wills, or of the written authorities which Hindoos sometimes grant to their wives for the adoption of sons after their own decease; an office for the registry of deeds, in each of the zillahs and principal cities, has been established by Regulation XXXVI, 1793; (extended to Benares by Regulation XXVIII, 1795;) and by Regulation XVII, 1803, for the ceded provinces. The superintendence of this office is

R. XXXVI, 1793, extended to Benares by R. XXVIII, 1795.
C. R. XVII, 1803.
Purpose of establishing an office for the registry of deeds, in each zillah and city.

Superintendence of it, is

* The provisions referred to, have been recently extended to the ceded provinces by Regulation VIII, 1805.

committed

whom committed.

Oath prescribed.

And fees authorized.

Provision for appointment of a deputy, when requisite.

What deeds to be registered.

Of what deeds the register is to be optional, without any prejudice to the rights of parties.

Preference to registered deeds of sale, gift, or mortgage, of immovable property, if executed after the period fixed for the operation of this regulation.

committed to the registrar of the zillah or city court: who is bound by oath to the faithful execution of it; and not to derive from it any benefit whatsoever beyond his authorized fees viz. two rupees for every deed registered by him; one rupee for every copy furnished of a registered deed; and half a rupee for every search made on an inspection of the registry books. In cases of absence, sickness, or other inability to give personal attendance, the registrar, with the approbation of the judge, is permitted to appoint a deputy, being a contracted servant of the Company, to act for him, as registrar of deeds, after taking the prescribed oath. The several descriptions of deeds to be registered, are, *First* " deeds of sale or gift of land, houses, and other real property " *Secondly* " deeds of mortgage on land, houses and other real property; as well as certificates of the discharge of such " " in unbrances " *Thirdly* " leases and limited assignments of " land, houses and other real property, including generally " all conveyances used for the temporary transfer of such " property." *Fourthly* " Wasteknamahs or wills." *Fifthly* " written authorities from husbands to their wives, to adopt " sons after their own demise " It is left to the option of all persons to register, or not, as they may think proper, any of the above descriptions of deeds executed previously to the periods fixed for the operation of the regulations; viz. the 1st January, 1796, in Bengal, Bahar, Orissa and Benares; and the 24th March, 1801, in the ceded provinces; as well as the third, fourth, and fifth descriptions of deeds specified, whenever the same may have been, or may be hereafter, executed. It is provided that the not registering any such deeds " shall in no wise operate to the prejudice of the rights of the " parties thereto." But that every deed of sale, gift, or mortgage, coming within the first or second of the descriptions specified, which may be executed, on or after the dates stated, and a memorial of which may be duly registered according to the regulations, shall, if its authenticity be established to the satisfaction

tion of the court, invalidate any other deed of sale or gift for the same property; or if a mortgage deed, shall be satisfied in preference to any other mortgage of the same property, which may have been executed subsequently to the periods fixed for the operation of the regulations, and may not have been registered; whether such unregistered deed shall have been executed before or after the registered deed. The object of this rule however being to prevent frauds in the purchase, gift, or mortgage, of real property which may have been before sold, given, or mortgaged; and as no person can suffer such imposition when apprized of a previous transfer or mortgage; it is declared that "if any person shall purchase, receive in gift, or take in mortgage, any real property, knowing such property to have been previously sold, given, or mortgaged to any other person; and that the deed of sale, gift, or mortgage, has not been registered; and shall register his own deed; in such case the deed of sale, gift, or mortgage of such subsequent purchaser, donee, or mortgagee, which may have been registered, shall not, from the registry of it, invalidate, or be discharged in preference to the unregistered deed of sale, gift or mortgage, first executed; provided the authenticity of the latter be established to the satisfaction of the court." *

But not, if a previous transfer or mortgage was known at the time of a subsequent sale, gift or mortgage, of the same property.

THE regulations further direct that "the registry of all deeds shall be made in the register's office of the zillah or city in which the property affected by them may be situated;" and if situated in two or more jurisdictions, that "the deeds affecting it shall be registered in the office of each jurisdiction." The person or persons executing the deed, or their authorized representatives, with one or more of the witnesses to the execution of it, are required "to attend at the register's office, and prove by oath be-

Registry were to be made.

On what evidence.

* It has further been declared by government (on a reference from the fudder dewanny adawlat made November 14th, 1788,) that although all deeds duly presented for registry under this regulation are to be registered; they derive no validity from the registry, if invalid under any other regulation in force.

And is what
stems.

Certificate of
registry to be
endorsed on the
deed.

And to be con-
sidered suffici-
ent evidence of
the registry.

Counterfeiting
or falsifying any
such certifi-
cate, or entry
in registry
books, to be
prosecuted by
registers, in the
criminal courts.

Inspection of
registry books
to be allowed.

And copies of
deeds granted
to parties con-
cerned.

On what proof,
such copies to
be received as
evidence.

R. VII. 1800,
§ XXIV.
C. R. XLIII,
§ 1803, XIII.
Applications to
registers of
deeds, and co-
pies furnished
by them, to be
on stamp pa-
per.

“ fore the register, the due execution of the deed;” after which it is to be registered in a prescribed form, and entered, under the signature of the register, and the parties or their representatives, and of two creditable witnesses, in a registry book; to be kept separately for each species of deed; and to be attested, on each leaf, by the zillah or city judge; who is to note, on the last page of each book, the number of pages contained in it, and to attest the same with his official signature; without which no registry book is to be deemed authentic. The original deed, after the registry of it, is to be returned, with a certificate endorsed upon it, “ specifying the date, and the time of the day, “ on which such deed shall have been registered; with refer- “ ences to the book containing the registry thereof, and the “ page and number under which the same shall have been en- “ tered.” The certificate so endorsed is to be considered in all courts of justice sufficient evidence of the registry. Persons suspected, upon sufficient grounds for commitment, of counterfeiting or falsifying any such certificate, or any entry in the registry books, are to be prosecuted on the part of government in the criminal courts; and the registers, as agents for the prosecution, are “ to adopt every legal measure in their “ power for the proof of the crime, and the due execution of “ the laws against the offender.” The registers are also to allow all persons, upon application to them, to inspect the registry books; and to grant copies of all deeds registered by them to any persons whom they may concern. Such copies, in the event of the originals being lost, destroyed, or otherwise not forthcoming, to be received as evidence, on proof “ by “ the subscribing witnesses to the original deed that the origi- “ nal was duly executed.” But under the regulations for levying a stamp duty, all application preferred to the registers of deeds, and all copies of deeds furnished by them, are required to be written upon stamp paper; viz. the petitions of application upon the paper prescribed for judicial pleadings; and copies of deeds upon that prescribed for law papers. The duty,

duty upon the former may be remitted, as upon miscellaneous petitions, in cases of poverty. But the stamp paper for the latter " is to be supplied by the party who may desire to " be furnished with such copies."

Duty on the former may be remitted in cases of poverty.

But stamp paper for the latter to be supplied by party obtaining copies.

TRANSLATIONS of the foregoing rules were directed, by the concluding section of Regulation XXXVI, 1793, to be transmitted by the zillah and city judges " to each of the cauzees in " their respective jurisdictions. " It is further made a general rule by Regulation XXXIX, 1793, (extended to Benares by Regulation XLIX, 1795,) and Regulation XLVI, 1803, for the ceded provinces, that the judges shall furnish the cauzees, who are stationed in their jurisdictions, with translates of all regulations printed and published in the prescribed form. The judicial functions, which were exercised by some of the officers of this denomination under the Mahomedan government, have been discontinued since the establishment of courts of justice under the superintendence of British judges; and with an exception to the law officers, attached to the civil and criminal courts, the general duties of the present cauzees, stationed at the principal cities and towns, and in the pergunnahs which compose the several zillahs or districts, are confined to the preparation and attestation of deeds of conveyance, and other legal instruments; the celebration of Mosulman marriages; and the performance of the ceremonies prescribed by the Mahomedan laws, at births and funerals; or other rights of a religious nature. They are eligible however, under the regulations, to be appointed commissioners for the sale of property distrained on account of arrears of rent; as well as commissioners for the trial of causes, with the powers of referee and arbitrator, or those of muniff, before described; and are also intrusted by government, in certain cases, with the payment of public pensions, not exceeding fifty sicca rupees per annum; as will be hereafter more fully stated. It is therefore necessary that persons of character, who may be duly qualified

R. XXXIX, 1793, extended to Benares by R. XLIX, 1795, C. R. XLVI, 1803. Translates of foregoing rules, and all public regulations, directed to be transmitted to the cauzees, stationed in the several cities and zillahs.

Present duties of the city, town, and pergunnah cauzees.

R. VII, 1799, § VI.
B. R. V, 1800, § VI.
C. R. XXVIII, 1803, § XXVII. Eligible to be commissioners for sale of distrained property; and for trial of petty causes.

R. XXIV, 1793, § XV.
B. R. XXIV, 1795, § XII. Also entrusted with payment of pensions, in certain cases.

qualified

qualified for the subsisting office of cauzy, should be appointed to that station; and encouraged to discharge the duties of it with diligence and fidelity, by not being liable to removal, without proof of incapacity or misconduct, to the satisfaction of the Governor General in Council. The cauzy-ul-cuzzat, or head cauzy of the several provinces under this presidency, and the cauzees stationed in the cities, towns, or pergunnahs within those provinces, were accordingly declared by Regulations XXXIX, 1793, and XLVI, 1803, not to be removable from their offices, except for incapacity or misconduct in the discharge of their public duties, or for acts of profligacy in their private conduct; and by Section X, Regulation V, 1804, the rules which have been already noticed, concerning the appointment and removal of the law officers and principal ministerial officers of the courts of justice, are extended to the cauzees. It is further provided, that when the office of cauzy in any pergunnah, city or town, shall become vacant, the judge, within whose jurisdiction " the place may be situated, is to recommend " such person as may appear to him best qualified for the " succession from his character and legal knowledge." The name of the person so recommended is to be communicated to the head cauzy; who, " if he shall deem him unqualified " for the office, either from want of legal knowledge, or the " badness of his private character, is to report the same in " writing." It is likewise " the duty of the heady cauzy to " report every instance in which it may appear to him that " the cauzy of any city, town, or pergunnah is incapable; " or in which any such cauzy may have been guilty of mis- " conduct in the discharge of his public duty, or acts of " profligacy in his private conduct." All persons appointed to the office of cauzy shall receive a sunnud, or patent, under the official seal of the head cauzy; which by the stamp regulations is required to be written on stamp paper, bearing a duty of twenty five rupees.

Rules enacted for the appointment and removal of cauzes.

Provisions in R. V, 1804, § X, extended to them.

In what manner vacancies to be filled.

Reference to be made to head cauzy.

And report to be made by that officer in cases of misconduct, or incapacity, of any city, town or pergunnah, cauzy.

R. VI, 1797, § XXV.
C. R. XLIII, 1803, § XVIII.
Sunnud to be received by cauzes.

“ THE head cauzy and the cauzees stationed in the cities, pergunnahs, and towns, are to keep copies of all deeds, and law or other papers, which they may draw up or attest; and are to fix thereto their seal and signature. They are likewise to keep a list of all such papers; and in the event of their death, resignation, or removal, the list and papers are to be delivered complete to the successors.” A tax upon marriages which had been levied by the former government, at a rate varying from three to four rupees, was abolished by the committee of circuit in the year 1772, as injurious to the population of the country; and with a view to encourage matrimony, the marriage fees, which were then received by the cauzees, at the established rates of two rupees from the principal inhabitants, one rupee eight annas from the middling class, and one rupee from the lower classes, were ordered to be discontinued. The cauzees and mooftees employed at fixed salaries, as officers of the courts of justice, were directed to attest all writings, and to perform all ceremonies of marriages, births, and funerals, without exacting any fees whatever. But the prohibition was declared not to extend to any present, or gratification, made on the occasion of a marriage, or funeral, with the entire free will of the party.* In pursuance of this principle, it is provided by Section VIII, Regulation XXXIX, 1793, (rescinded in part by the first clause of Section XVI, Regulation VI, 1797, but restored in full by Section XII, Regulation VII, 1800;) and by Section VIII, Regulation XLVI, 1803, for the ceded provinces, that “ the cauzees stationed in the cities, towns and pergunnahs, are not to exact any fees for drawing up or attesting papers, or for the celebration of marriages, or the performance of any religious duties, or ceremonies which it has been customary for them to perform, excepting such as the

R XXXIX,
1793, § VII.
C R XLVI,
1800, § VII.
Copies and lists
of attested deeds
and law papers
to be kept by
cauzees and de-
livered to their
successors.

Former tax, and
cauzee's fee, on
marriages, abo-
lished in 1772;
and free gift
only allowed
for performance
of nuptial
or funeral ce-
remonies.

The same prin-
ciple continued
in existing pro-
visions for a
voluntary fee
only, on ac-
count of marri-
ages, and all re-
ligious duties
performed by
cauzees, as well
as for papers
drawn or at-
tested by them.

* Vide letter from the committee of circuit to the Governor and Council, dated 15th August 1772; And article 33 of the plan for the administration of justice, which accompanied it. Appendix No. 2 to the fifth report from committee of secrecy, 1773.

Cauzees declared liable to a civil action for any undue practices.

Fees and presents to officiating Hindoo priests, also left to will of the parties.

And no regulation of them, or of the appointment of the Hindoo priesthood, appears necessary or expedient.

Importance of strictly observing the rule for furnishing translations of all new regulations to the city, town, and pergunnah cauzees.

Suggestion for maintaining its intended effect, of promoting the publication of them.

" parties concerned may voluntarily agree to pay; as has
 " been hitherto the practice." They are at the same time
 declared liable to be sued in the civil courts " for any undue
 " practices in the discharge of the duties prescribed to them."
 It may be added that the fees and presents to the officiating
 priests at Hindoo marriages, funerals, and other ceremonies,
 are in like manner left to be determined by the will of the
 parties; and are usually proportioned to their rank and cir-
 cumstances. As every Hindoo family has it's proper *purohit*,
 or priest, who assists in the performance of all sacred or
 solemn rites, it would be obnoxious, if not impracticable, to
 frame any regulation, either for the appointment of the
 Hindoo priesthood; or for limiting the compensation to be
 received by them; and experience has not shewn that any
 alteration of established usage, in these respects, is required.

This section, and with it the first part of this Analysis
 (which has been extended to an unexpected length, but in-
 cludes one half of the entire code of regulations *) may be
 closed with a remark, that the rule for furnishing the city,
 town, and pergunnah cauzees, with translations in the cur-
 rent languages of all new regulations, being obviously intend-
 ed to promote the publication of them; an object of the
 greatest consequence to the people affected by them; it should
 be most carefully observed; and to maintain it's intended
 effect, whenever a cauze may be appointed, it should be an
 invariable rule to deliver over to him the whole of the regu-
 lations which may have been received by his predecessors.

* The regulations for Bengal, Bahar, Orissa, Benares, and the ceded provinces, from May 1793, to the same month in the present year, 1805, occupy nearly 1500 printed leaves, of small folio; or 3000 pages. The regulations comprised in the three sections, which constitute the first part of this Analysis, have been computed to fill about 1500 pages. Regulation II, 1805, enacted in the month of February (when this work was commenced) is the latest that could be included in the text. But the notes contain a brief recital of further regulations, concerning civil justice, which have been passed (whilst the preceding sheets were in the press) to the end of July 1805.

The inhabitants can then never be at a loss where to apply for information of the laws and rules in force, upon any subject: and were a similar practice adopted, with respect to the police officers and muniffs; or the former supplied with all regulations concerning criminal justice and police; the latter with all other regulations; and both required, under penalties, to deliver them complete to their successors; it would essentially promote the important purpose of the legislative provisions, which have been stated, for promulgating “ all regulations passed by government, affecting “ in any respect the rights, persons, or property, of their “ subjects;” and enabling “ individuals to render themselves “ acquainted with the laws, upon which the security of the “ many inestimable privileges and immunities granted to them “ by the British Government, depends.” *

That the nation may know the laws, upon which the security of their rights and privileges depends.

* As some interval may unavoidably elapse before the succeeding parts of this work can be prepared and printed; a summary of the contents of the First Part is annexed. The publication of this part having taken place, after the re-appointment of MARQUESS CORNWALLIS to the Government General, (of which his Lordship received charge on the 30th July 1805,) it has also appeared proper to prefix a dedication of this Analysis to MARQUESS WELLESLEY, by whose desire it was undertaken, as stated in the Introduction. A general Index and table of *subjects*, will be given with the concluding Part.

END OF FIRST PART.

SECOND PART.

SECTION I.

ON THE MOHUMMUDAN CRIMINAL LAW.

THE Courts of Judicature, established on the part of the East India Company, throughout their territorial possessions, are required, in the administration of criminal justice, to be guided by the Mohummudan law; excepting cases, wherein a deviation from it may have been expressly authorized by the Regulations of the British Government. It will therefore be useful to give a general view of such parts of the Mohummudan law, as have immediate relation to crimes and punishments; previously to exhibiting the amendments of it, which have been enacted by the Regulations of the Governor General in Council. The reasons, which led to such amendments, will, by this means, be rendered more intelligible; and the expediency of the provisions, which have been made for an efficient administration of criminal justice, will be more clearly and easily appreciated. It may further tend to bring into notice such defects, in the penal laws of the country, as still remain to be remedied.

Laws in force, for the administration of criminal justice, in the Company's courts of judicature.

Reasons, in consequence, for giving a general view of the Mohummudan penal law.

THE basis of Mohummudan law, religious, civil, and criminal, is the *Korán*; believed to be of divine origin, and

Foundation of the Mohummudan law, religious, civil, and criminal.

to have been revealed by an angel to MOHAMMUD; who caused it to be written and published, from time to time, as occasion required, for the refutation of his opponents, or the instruction and guidance of his followers: though the hundred and fourteen *Sōwūr*, or chapters, which compose the *Koran*, were not digested, in their present form, until after the death of MOHAMMUD; when they were collected by his immediate successor ASOO BUKA; and were afterwards, in the 30th year of the *Hijrah*, transcribed, collated, and promulgated, by order of the *Khaleefah* ÔTHMÂN.*

Ordinances of the *Koran* in opposition to other rules are null.

THE *Korân* being thus considered the written word of God, its texts when clear and applicable, and not abrogated by other texts of subsequent revelation, are unquestionable and decisive. But, as remarked by an eminent historian, "In all religions the life of the founder supplies the place of written revelation: the sayings of MAHOMED were so many lessons of truth; his actions so many examples of virtue, and the public and private memorials were preserved by his wives and companions." In fact, the ordinances of the *Korân*, in civil affairs, are few and imperfect; and must have proved altogether inadequate to provide for the various objects of legislation, in a large and civilized community, without the aid of the *Sōmmul*; or rule of conduct, deduced from the oral precepts, actions, and decisions, of the prophet. These were not committed to writing by MOHAMMUD; but were collected after his death, by tradition, from his companions, (the *Sahâbah*;) their contemporaries, (*Tâbi'een*, literally, followers;) and successors (*Tubâ-i-tâbi-teen*;) and the authentic traditions, which have been preserved in numerous compilations of *Ahâdees*, (*dicta, factaque*; precepts and transactions); *Sōnnun*, (*instituta vitæ, exempla*; rules of practice and examples); or *Riwâyât*, (*relationes, reports*;) constitute a second

Its imperfections appear, by the contrast of its traditional law.

Authenticity of the traditions which compose the *Sōmmul*.

* V. SALT'S Preliminary Discourse, Section III.

† In Chap. L. of the *Decline and fall of the Roman Empire*, relative to *Abbas*.

authenticity of Mosulman law; conclusive (if the authenticity and application of the traditions be admitted) in all cases not expressly determined by the words of the *Korán*.*

The schisms and dissensions, however, which took place among the Mohummudans, after the demise of their legislator and founder, especially the contest for the succession to the *Imāhād*, or pontificate, which gave rise to the *Shayā*, or sects of *Shi'as*, have occasioned various differences and disagreements, both in reading and interpreting the word of the prophet, and in admitting or rejecting the traditions, which constitute the oral law. There appears to be an error, or verbal inaccuracy, in the observation of the learned, and in several German translators of the *Korán*, that "the *Sunnites* follow the *Ḥadīth*, or book of traditions of their prophet, as of canonical authority, whereas the *Shi'ites* reject it

Differences
of opinion
have arisen
among the
Mohummudans
concerning the
authenticity of
the traditions
of their prophet.

The above
error is
corrected.

The following are the titles of the most celebrated collections, in Arabic and authority, of the *Ḥadīth*, or orthodox traditions, are the following, denominated *Sūbūḥ-jāmiḥ*, or the *morning* :

1. *Sūbūḥ-jāmiḥ*. Compiled by ABŪ ḤAMĪD, MUHAMMAD, of *Bulḥār*. He was born A. H. 201, and died in the year 250, in the suburb of *Samarkand*. His compilation is said to contain 250,000 traditions, selected from 220,000.

2. *Sūbūḥ-jāmiḥ*. By ABŪ L-HASAN, MUHAMMAD, of *Nishāpūr*. He died A. H. 261; and is also said to have compiled his work from 220,000 traditions. This and the preceding collection, when cited together, are called *Sūbūḥ-jāmiḥ*, or the two authorities.

3. *Sūbūḥ-jāmiḥ*. By MUHAMMAD-BEN-I YUZEED, BEN-I MĀSHAN; of *Kuzneva*, historically named BEN MUHAMMAD, in D'HÉRELLOT. (Title *Sunan Ebn Maḡal*.) He died at *Suzereva*, in *Ḥak*, A. H. 273.

4. *Sūbūḥ-jāmiḥ*. By ABŪ DĀWūd, SULḤMĀN, of *Sijistān*. He was born A. H. 202, and died at *Buḥārā*, in the year 275. His work is stated to consist of 4,000 traditions, selected from 520,000.

5. *Jāmiḥ-i Ḥadīth*. By ABŪ ḤAMĪD, MUHAMMAD, of *Tirmīz*, in *Tobātān*. He is also surnamed ZURRER or DHURRER, from his blindness. His birth was A. H. 220, and his death in 279. His compilation is noticed by D'HÉRELLOT, under the title of *Ḥadīth al-Kabīr*; and is erroneously cited (apparently from D'HÉRELLOT,) in HAMILTON's Preliminary Discourse, page 36, as quoted in the *Ḥadīth-jāmiḥ*, instead of the *Jāmiḥ-i Ḥadīth*, on *ḥikm*, or jurisprudence, by IMĀM MUHAMMAD.

6. *Jāmiḥ-i Ḥadīth*; called also *Sūbūḥ-jāmiḥ*. By ABŪ-ḤAMĪD, RAHMĀN AḤMAD, of *Nishāpūr*, a city of *Khorāṣān*. He was born A. H. 215; and died in the year 303. This collection is selected from a former compilation, by the same author, called the *Sūbūḥ-jāmiḥ*; and mentioned by D'HÉRELLOT, under the title of *Sunan Al Kabīr*.

The four works last mentioned, when cited collectively, have the designation of *Sūbūḥ-jāmiḥ*, or the four collections of traditions. The short notices, which have been given, of their compilers

and

" as apocryphal, and unworthy of credit.*" From this remark it might be inferred, that the *Shiyá* reject the traditions altogether; whereas they admit many which are not deemed authentic, and are consequently rejected, by the *Söonees*. They have also their collections of *Ahâdees*, and *Söonun*, which they deem genuine and authoritative.† The difference between them, and the *Ahl-i-Söonnut*, or orthodox traditionists, who, as remarked by Mr. HAMILTON, appear to have assumed this title of distinction, " in opposition to the innovations of the sectaries," ‡ lies, as far as respects the traditions, in the different authorities, which are admitted by the two sects for the *Ahâdees*, received by

Difference between the *Söonees* and *Shiyá*, in admission of traditions.

and of the authors of the *Sabceebyn*, are taken chiefly from the *Mirás-öl-âdüm*, an esteemed general history composed by БУХТ-ҮҮҢ КХАН, in the reign of АУРУНЗЕВ. They are confirmed, with many other particulars, in the *Mijbâs*, a work of authority on the traditions admitted by the *Söonees*; and used, as a 'class book, in Mosulman Colleges, with the *Sabceeb-i Bekháree*, and *Sabceeb-i Moöslim*. The author, ШҮҮҢ ХАЛЕРӨӨДӨӨН, АБОО АБДОЛЛАХ, МАИМООД, who finished his undertaking (to verify and illustrate the traditions contained in a former compilation, called the *Musabceebö'söonnut*, by HOSÄN BIN-I MUÖÖÖÖD, FURÄ, &c.) A. H. 737, states that the *Mowuttä* of MÄLIK BIN ANS, (the founder of the second orthodox sect, who died A. H. 179) is, by some reckoned one of the six authentic collections, instead of the *Söonun-i Ibn-i Mäjab*. He adds that others are of opinion, the *Därümee*, compiled by АБОО МОХУММУД АБДОЛЛАХ of *Sumurkund*, surnamed DÄRÜME, who was born A. H. 181, and died in 255, should be classed as the sixth authentic. But he has himself given this place to the compilation of МОХУММУД, the grandson of МÄҢҢҢҢ; and it is commonly placed third in the series, with reference to the supposed order of publication.

* SALE'S Preliminary Discourse, Section VIII.

† MOÜLAVI SIRÄJ ÖB'DEEN ÄLLE (one of the Law Officers of the Courts of *Sadr Deenwänee* and *Nizāmüt Adälut*, as well as of the Supreme Court, and employed by the late Sir W. JONES, to compile the *Sheräb* part of a Digest of Mosulman Law, upon contracts and inheritance) states the *Köitööb-i urbä*, or four books of traditions, held authentic by the *Shiyá*, to be the following:

1. *Takzeeb*. 2. *Isbäfar*. Both compiled by АБОО ЖÄҮҮҢ МОХУММУД, of *Tees*, in *Kho-räsän*.

3. *Jämä-i Käfee*. By МОХУММУД BIN-I YÄKOÖB. Of *Rg*, in *Perfiän Iräk*.

4. *Mun lä Yabzöörb ööl-fukeeb*. By МОХУММУД BIN ÄLLE, of *Komm*, also in *Iräk-i Äjum*.

The third of these collections, which quotes the compiler of the two first, is said to have been presented to IMÄM MAHRE, who was born A. H. 255. The author of the fourth compilation is stated in the *Mujälu ööl-Mämuneen*, to have been contemporary with, and protected by, the Persian King РОКН-ÖӨДӨӨЛАН, who died, A. H. 366.

‡ Preliminary Discourse to his translation of the *Hidäyab*, page 22. His observation, as length, is " The Mussulmans, who assume to themselves the distinction of orthodox, are such " as maintain the most obvious interpretation of the *Koran*, and the obligatory force of the traditions, in opposition to the innovations of the 'sectaries; whence they are termed *Söonut*, or " traditionists." This, however, is partly open to the same objection, as has been stated to the remark of Mr. SALE.

them

them respectively. The *Sōonees* allow traditionary credit to the *Sahābah*, or companions of their Prophet; especially to the most eminent amongst them, or those who had the longest and most familiar intercourse with MOHUMMUD; and to the *Khulfsā-i rāshudeen*, or the four *Khuleefahs*, who were the immediate successors of the Prophet; and instructed by him in the principles, and tenets of his religion. Also to several intelligent and learned men, who were contemporary with the companions and first *Khuleefahs*, and who are included in the general description of *Tabi'een* already mentioned; as well as to others, who succeeded these; (the *Tabi-i-tabi'een*;) and have verified their reports of traditions, by citing the names of the persons, through whom they were successively traced to their genuine source, the inspired Apostle of GOD.*

Authorities admitted by the *Sōonees*.

THE *Shi'as*, on the contrary, give no authority, or credit, to the three first *Khuleefahs*. ABOO BUKR, ÔMUR and ÔTHMÂN; nor to any other companions of MOHUMMUD, excepting such as were partisans of ÂLEE. They extend their faith and obedience, however, to the admission of all traditions of their Prophet's sayings and actions, which they believe to have been verified by any one of the twelve *Imāms*; from whom they take their denomination of *Imāmceyah*; as well as to the precepts and examples of those *Imāms* themselves; the whole of whom they venerate, as being the lineal descendants (through FĀTIMAH) and, according to their tenets, the rightful succes-

Authorities of the *Shi'as*.

* The nature of this treatise does not admit of a fuller account of the *Sōonee* traditions; which are distinguished by some authors as *Sabeeh* (authenticated); *Husn* (approved); *Za'ief-ô-ghareeb* (weak and poor); *Mōnkur-ô-mōkzuzâ* (denied and imposed); by others, as *Mō'snud* (vouched or certified); and *Mō'sful*, or *Mōnku'â* (detached or divided). The *Mō'snud* are also subdivided as *Murfo'â* (ascending to the Prophet); *Mō'kur'f* (resting with the *Sahābah*); and *Makto'â* (severed or cut short among the *Tabi'een*); or by another classification as *Mō'tawâtur* (repeated, successive); *Mush'hur* (public, notorious); and *Wāhid* (single, particular). The *Mizbān*, referred to in a former Note, has however been translated by an officer of the Bengal Establishment, and if it receive sufficient encouragement to repay the heavy expence of printing in India, it will be speedily published.

fors of MOHUMMUD; and the last of whom they believe to be still living, though invisible; it having been predicted of him, that he will return to judge and rule the world; to punish sinners, and those who have departed from the true faith; and to restore and confirm the genuine truths of religion, with piety, justice, and every other virtue.*

Further legal authorities received by the *Soonces*, in cases not provided for by the *K'rar* and *Soonnut*.

WHEN neither the written nor oral law prescribes a rule of decision, the concurrence of the companions of MOHUMMUD (*Ijmā'â-i Sahâbab*) is received by the *Soonces*, as a third source of legal authority: and if this also fail, they allow the validity of reason, restricted by analogy, (*Kiyâs*,) in applying, by inference, the general principles of law and justice, to the various transactions and circumstances of the changeful scene of human life; which, as they could not be all foreseen, it was impossible they should be completely and expressly provided for. This is so clearly stated, with the origin of the principal *Soonce* sects, who agree in matters of faith, (*âkâ'eed*), but differ on points of practical jurisprudence, (*fikh-h*,) in a section of the *Mokhtufur ô dowul* (compendium of dynasties) of GREGORIUS ABOO'L FURUJ, translated (into Latin) by POCOCK, in his *Specimen Historiæ Arabum*; that the following English version, will not, it is presumed, be unacceptable;

* The names of the twelve *Imâms* are given by D'HÉRIBLOT, under the head of *Imam*. He has also given a brief statement of the tenets of the *Shi'ya*, under the titles of *Schiab*, *Alis*, and other titles of his valuable, though (as might be expected in so voluminous and miscellaneous a work) sometimes erroneous and often imperfect compilation. A fuller account of the doctrines and practise of the *Shi'ya* is contained in the 2d vol. of CHARDIN. (*Description de la Religion des Persans*, in the Amsterdam Edition of his *Voyages en Perse* published in M.DCC.XI.) But the most authentic information upon the jurisprudence of the *Imâmeyah* sect, (which, not having been established, for the administration of justice, in any part of the Company's territories, needs not to be further noticed in this tract,) will be furnished by the completion of a work, the first volume of which is already printed, and entitled—"A Digest of *Mohammudan Laws*, according to the tenets of the *Twelve Imams*; compiled under the superintendence of the late SIR WILLIAM JONES: extended, so as to comprise the whole of the *Imâmeyah* code of jurisprudence, in temporal matters; and translated, from the original *Arabic*, by order of the Supreme Government of Bengal; with Notes, illustrative of the decisions of other sects of Mohammudan lawyers, on many leading and important questions. By Captain JOHN BAILLIE, Professor of the Arabic and Persian Languages, and of Mohammudan Law, in the College of Fort William."

especially

especially as both the Arabic original and Latin translation, are little known in India.*

“ OF the sects (*Muzáhib*) which differ upon the branches, or derivative parts of the law, concerning rules of jurisprudence, and cases of disquisition, four are the most celebrated: viz. those of MÁLIK BIN-I ANS; of MÖHUMMUD BIN-I IDREES, ŠŖSHÁFÍJEE; of AHMUD BIN-I HUNBUL; and of ABOO HUNEEFAH NAÔMÁN BIN-I THÁBIT. The fundamental grounds of disquisition (*Ijtihád*) are also four; the scripture (*Kitáb*); the traditionary law (*Sönnut*); the concurrence of the Prophet's companions (*Ijmā'á*); and analogy, or analogical reasoning (*Kiyás*). For, when any legal question arose, respecting what was lawful or unlawful, a regular investigation took place, in the following manner. First, they searched the Book of Almighty God (the *Korán*); and if any clear text were found in it, such was adhered to. But, if not, they sought for a precept, or example, of the Prophet; and abided by it, if applicable, as decisive. If none such were discovered, they inquired for a concurrent opinion of the *Sáhábah*; who, being directed in the right way, are not open to suspicion of misleading; and therefore, if their sentiments could be ascertained, on the point in question, they were deemed conclusive. If not, an ultimate resort was had to analogy and reason; the variety of contingent events being infinite; whereas the texts of the law are finite. It thus appears certain that the exercise of reason may be proper and necessary in legal disquisition. IMÁM DÁOOD of *Isfahán*,

Origin of the principal *Sunnah* sects, as stated by ABOO' FURUJ.

* ABOO'L FURUJ was a Christian, born at *Malatbia* in *Aladúlta*, or *Armenia minor*, A.C. 1226. But he wrote in *Arabic*, and appears to have been well versed in the religion and law, as well as in the history, of *Arabia*. V. Pocock's *specimen historie Arabum*, comprising an extract from the dynasties of ABOO'L FURUJ, which, GIBSON observes, “ form a classic and “ original work on the Arabian antiquities.” Published at Oxford, in 1650. Also the complete Latin version of the original work, by Pocock, published in 1663. GIBSON has added, upon this, however, that “ it is more useful for the literary than the civil history of the East.” Cap. LI, n. 13.

however,

however, entirely rejected the exercise of reason; whilst, on the contrary, ABOO HUNEEFAH was so much inclined to it, that he frequently preferred it, in manifest cases, to traditions of single authority. But MÁLIK, SHAFÍËE, and IBN-I HUNBUL, had seldom recourse to analogical argument, whether manifest or recondite, when they could apply either a positive rule, or a tradition. This gave rise to their different opinions and judgment; which are recorded in books that treat of their disputations; yet neither infidelity, or error, is to be charged against them on this account."

Which of the
four principal
sects prevail in
India.

THE four principal jurists, and founders of sects, among the *Sóonees*, who are noticed by ABOO'L FURUJ, have been particularly mentioned in the notes of POCOCK'S specimen, already referred to; in the *Bibliothèque* of D'HERBELLOT; and in the preliminary discourses of SALE and HAMILTON. The doctrines of MÁLIK, and IBN-I HUNBUL, are not known to prevail in any part of India. Those of SHAFÍËE have a limited prevalence on the sea coast of the peninsula, and are understood to obtain among the *Malays*, and other

* Their names, at length, are—1. ABOO HUNEEFAH NAÔMÁN BIN-I THABIT; so pronounced in India, SÁBIT. 2. ABOO ÂBDÖÖLLAH MALIK BIN-I-AN, or, as otherwise read, ANUS. 3. ABOO ÂBDÖÖLLAH MOHUMMUD IBN-I-IDREES ÖÖ'SHAFÍËE, or a descendant from SHAFÍË. 4. ABOO ABDÖÖLLAH AHMUD IBN-I HUNBUL. The first is commonly called ABOO HUNEEFAH, meaning the father of HUNEEFAH, and therefore is improperly cited, in the translation of the *Uddiyab*, by the name of HUNEEFAH only; which, moreover, is a feminine appellation, and was the name of the second wife of ÂLFE. (Vide Tit. HANIFAH, in the Bib. of D'HERBELLOT.) He was born at *Koofab*, about A. H. 80; (some say ten, and others twenty-one, years earlier;) was instructed in the traditions, by IMÁM JÂFUR-I SADIK, the sixth *Imám*; who, as an authority for the precepts and actions of MOHUMMUD, is cited by the *Sóonees*, as well as by the *Shi'as*; (not the *Shereáh* Doctor, ABOO JÂFUR, mentioned in a former note; as erroneously stated in HAMILTON'S Preliminary Discourse, p. xxiii. Vid. Tit. *Cinfaar* in the Bib. Or.) and died in prison, at *Bughdád*, in the *Khuláfut* of MUNSOOR, A. H. 150. The founder of the second sect is known by his proper name MÁLIK. He was born at *Mudeenab*, between the years 90 and 95 of the *Hijrah*; and died, at the same place, in a state of religious retirement, during the reign of HÁROON ÖÖ'RUSHEED, A. H. 179. The patronymic, *ShafíËe*, usually distinguishes the third leader; who was born at *Gaka* or *Afsalon*, in *Palästina*; in the hundred and fiftieth year of the *Hijrah*; and died at *Cairo*, (where the famous SALAH ÖÖ'DDIN, some centuries afterwards, founded a College, in honour of his memory and doctrines,) A. H. 204. The last chief, AHMUD, is more generally called, from his father, IBN-I HUNBUL. He was born at *Bughdád*, or according to some at *Mura*, or *Muro*, in *Khorásm*, A. H. 164; and died at *Bughdád*, where he attended the lecture of SHAFÍËER, A. H. 241.

Mosulman inhabitants of the Eastern Islands. But the authority of ABOO HUNEFAH, and his two disciples, ABOO YOUSUF, and IMÁM MOHUMMUD, is paramount, and exclusively governs judicial decisions, in *Bengal* and *Hindeostan*, as well as at *Constantinople*, and other seats of Mohummudan dominion in *Turkey* and *Tartary*. It will therefore be sufficient to state the system of ABOO HUNEFAH, with the illustrations, and amendments, of ABOO YOUSUF and IMÁM MOHUMMUD *; noticing, after the manner of the *Hid'yah*, any particular opinions of the other orthodox sects, upon points of importance, which may appear to require it.

It has been remarked by Sir W. JONES, in his preface to the *Sinjeauk*, † “ that although ABOO HANEFAH be the ac-
“ knowledge

Rule of decision
when there is a
difference of
opinion between

* ABOO YOUSUF YAKOUB BIN-I IBRÁHEEM O' L KOFFEE, was born at *Kasab*, A. H. 113, and after finishing his studies under ABOO HUNEFAH, was appointed *Kázee* of *Enghelab* by the *Alahschah*, HÁDER. He was afterwards, in the reign of HÁROON O' RUSHEED, made *Kázee o' Kázát*, or chief judge; and retained that high station, (which used to have been first instituted for him) until his death A. H. 182.—ABOO ÁBDELLAH MOHUMMUD BIN-I HUSUN O' SHYBANEE, (of the tribe of *Saj'ín*) who is usually called IMÁM MOHUMMUD, was born at *Hájit*, in *Arabian Irák*, A. H. 132. He was a fellow pupil with ABOO YOUSUF, under ABOO HUNEFAH, and on the death of the latter, continued his studies under the former. He is also said to have received instruction from MÁLIK. He was appointed by HÁROON O' RUSHEED to administer justice in *Irák-i ajam* or *Persian Irák*; and died at *Ry*, the former capital of that province, A. H. 179; or, according to the *Rohzot ol'riyákean*, an esteemed history from the commencement to the 759th year of the *Hijrah*, by YALÍJEE, A. H. 189. (See further particulars respecting ABOO YOUSUF and IMÁM MOHUMMUD, in HAMILTON's Preliminary Discourse.) ZOOFUR BIN-I HOZÁL, and HUSUN BIN-I ZIYÁD, (the former of whom held the appointment of chief magistrate at *Basrah*, where he died A. H. 158) were also two distinguished contemporaries, and scholars, of ABOO HUNEFAH; and are sometimes quoted as authorities for his doctrines; especially when the two principal disciples are silent.

† A work of authority upon the Mohummudan law of inheritance, translated and published, with a commentary, by Sir W. JONES, in the year 1792. This is the only part of the *Mosulman Digest*, undertaken by the venerable judge in 1788, which his various avocations and studies allowed him to complete. He deemed it worthy of being exhibited entire, as containing the “ Institutes of Arabian law on the important title mentioned by the British legislature (in the Statute 21. GEORGE III. Chapter LXX) of inheritance and succession to lands, rents, and goods.” And it is of particular value, to the jurisprudence of British India, as the *Hid'yah*, translated by Mr. HAMILTON, does not include the law of inheritance. It has not been ascertained when the author of the original treatise lived. But the *Kusf* o' *Zunoon*, (or *dhunoon*, as pronounced in *Arabia*) the bibliographical work of HÁJEE KHULFAH, which furnished materials for a considerable part of the *Bibliothèque Orientale*, (Vid. GALAND's preface, p. xiv. Ed. M.DCC.LXXVI.) mentions it, under the title of *Furáyd o' Snjásunndee*

ABOO HUNEFAH, and his two disciples, ABOO YOOSUF and IMAM MOHUMMUD.

“ knowledgeable head of the prevailing sect, and has given his
 “ name to it, yet so great veneration is shown to ABOO
 “ YOOSUF, and the lawyer MOHUMMUD, that, when they both
 “ dissent from their master, the Moofulman judge is at liber-
 “ ty to adopt either of the two decisions, which may seem
 “ to him the more consonant to reason and founded on the
 “ better authority.” This remark corresponds with the re-
 ceived opinion of present lawyers; and is sanctioned, for
 the most part, by a passage to the following effect in the
Hummādecyab.* “ *Futwās* (law decisions, or opinions) are
 “ given primarily, according to the doctrine of ABOO HU-
 “ NEFAH; next according to ABOO YOOSUF; next according
 “ to IMAM MOHUMMUD; next according to ZOORUR; and
 “ then according to HUSUN BIN-I ZIYAD. It is said, that if
 “ ABOO HUNEFAH be of one opinion, and his two disciples
 “ of another, the *Mōftee* is at liberty to chuse either: but the
 “ preceding rule must be observed, when the *Mōftee* is not
 “ a scientific jurist; (and therefore not competent to judge of
 “ the opposite opinions.) This is copied from the *Kōshyab*.†
 “ In judicial decrees however a preference is given to the
 “ doctrine of ABOO YOOSUF (who was an eminent judge); for

in the following terms; together with the date of the commentary of SĒYUD SHUREEF; the substance of which is given by Sir W. JONES, with that of a recent Persian comment, by MOULAVEE MOHUMMUD KĀSIM, who was employed by Mr. HASTINGS to translate, from the *Arabic* into *Persian*, both the *Sirājee-yab* and the *Shureefee-yab*. “ The *Futūwā*” “ *Sirājwunder*, composed by IMAM SIRAJ OO’ DEEN, MAHMOOD BIN-I ĀBDOŌ’ RUSHEED, of “ *Sirājwunder*, is commonly called the *Futūwā-i Sirājee-yab*. It is held in high estimation “ and in general use. Many of the learned have written commentaries upon it, to the “ number of forty; the best of which is the comment of SĒYUD OO’ SHUREEF ĀLE “ BIN-I MOHUMMUD, of *Foorjūn*; finished, at *Sumukund*, in the year (of the *Hijrah*) “ 804. This commentary is of the first authority, and universally received. Several “ Scholiasts, of erudition, have given annotations upon it.”

* A collection of legal expositions, by ABOŌ’L FUTHA, ROKN ŌO’ DEEN BEN-I HOSĀM, *Mōftee* of *Nāgôr*, in the *Dakhan*; and dedicated to his teacher, HUMĀD OO’ DEEN, AHMUD, chief *Kāzee*, of *Nubr-wālab*. The time when this work was compiled is not exactly known; but, though of modern date, it is held in considerable estimation. The court of *Nizamut Adālut* possess a complete copy, obtained for them, with some other law books, by Lord TEIGNMOUTH, from the *Nurwāb Vizeer*, in the year 1797.

† A law tract often quoted in the *Futūwā-i Adālumgeeree*, not known to be at present extant; and by whom composed, has not been ascertained.

“ IMÁM *Surukhjee*,* has declared it safe to rely upon ABOO
 “ YOOSUF in judicial matters; and that the learned have
 “ followed him in such cases; though if there be a difference
 “ between the two disciples, whichever agrees with ABOO
 “ HUNEEFAH must be preferred. The joint opinion of the
 “ disciples may also be adopted, though different from that
 “ of ABOO HUNEEFAH, if the difference appear to proceed
 “ from a change of human affairs; (*lit.* a change of men,
 “ and alteration of times;) and modern lawyers are a-
 “ greed, that the doctrine of the two disciples may be taken
 “ for adjudication in all matters of civil justice.”

It appears, however, that the ancient jurists held the authority of ABOO HUNEEFAH to be absolute, although both his disciples might differ from him. This is stated, without reservation, in a chapter, “ on the order of authorities to be observed in practice,” forming part of the book entitled *Adab ōl Kázee*, or *duties of the Kázee*, in the *Futáwá-i Aálumgeeree*, or collection of law cases, compiled by order of the Emperor ÁÁLUMGEER. The same chapter contains other useful information upon the rules and discretion, under which the Mofulman magistrate is empowered to administer justice; and as it is not long, a literal translation of it is here introduced; omitting only a quotation from the *Mubſoot*, which being nearly a repetition of that given from the *Budayid*, the insertion of both appeared superfluous.

Authority of
 ABOO HUNEEFAH
 formerly
 held absolute,
 altho' both his
 disciples might
 differ from him

“ IT is incumbent upon a *Kázee* (or judge) to give judgment according to the book of God; to know what parts of the divine book are in force, and what have been abrogated; to be able to distinguish between the texts which are clear

Chapter of the
Futáwá-i Aálumgeeree, “ on
 the order of
 authorities to
 be observed in
 practice.”

* SHUMS OOL AÍMMAH, ABOO BUKR MOHUMMUD, native of *Surukhi*, in *Khoráſán*. The *Mabſoot*, composed by him, will be mentioned in a subsequent note. He also wrote a commentary on the *Yámá-i Sugheer* of IMÁM MOHUMMUD; and a comment upon the *Kázee ōl Hákim*, (translated in the *Kutſf-ōl-aznoon* to have been composed by HÁKIM-I SHAHEED, MOHUMMUD; but no longer extant,) which is called *Mabſút-i Surukhjee*, and often quoted in the *Hidýah*. He died, at the place of his nativity, A. H. 483.

and positive; and such as are of doubtful meaning, having obtained a different interpretation from the learned. If no rule be found in the book of God, the *Kázee* is to decide according to the traditions from the Prophet. He must therefore be competent to discriminate those in force from such as have been superseded; and the spurious and invalid, from such as are genuine and authoritative. He must be acquainted with those which have obtained successive, notorious, or single, verification; and with the character and credit of the reporters of them. Because some are celebrated for their knowledge of jurisprudence (*shih-h á ádalut*); as the four first *Kbukefahs*, and the three *ÁBDÖÖLLAHS*, (viz. *ÁBDÖÖLLAH IBN-I ÔMUR*, *ÁBDÖÖLLAH IBN-I ÁBBÁS*, and *ÁBDÖÖLLAH IBN-I MUSÔOOD*, three of the most learned of the companions); whilst others are esteemed on account of their long and familiar intercourse with the Prophet, and their perfect recollection of the traditions; and they are preferred accordingly; the former as the best authorities on the general principles of legal science; the latter for the authenticity of particular traditions. If a case arise to which none of the traditions, derived from the Prophet, may be applicable, let the *Kázee* determine it according to the concurrent opinion of the *Sahábah* (companions), for their concurrence affords a just and obligatory rule of conduct. If there be a difference of opinion among the companions, let the *Kázee* compare their respective arguments, and follow those which, on investigation, may appear to him preferable; supposing him qualified to enter into such a disquisition. He is not authorized to reject the whole of these opinions, and adopt a judgment of his own, altogether novel. For the companions have agreed upon this point, that although they may differ from each other, it is not lawful to institute new doctrines, at variance with the whole of them. *KHUSÁF** holds the contrary opinion, that

when

* *IMÁM ABÖÖ BUKE, AHMED BIN-I ÔMUR*, surnamed *KHUSÁF*, of the *farrier*. He composed

when the companions differ, the *Kázee* may adopt a judgment altogether distinct, as their dissention affords ground for disquisition: but what is above stated has the best foundation. When the companions have agreed upon a point, in which one of their followers (*tabi'een*) has dissented from them; if the dissenter was not their contemporary, his opposition has no weight; and a judgment given conformably thereto, against the concurrent opinion of the companions, would be invalid: but if he were contemporary with them, and then expounded the law in opposition to their opinions, and they gave sanction to his disquisitions, as in the instances of SHORÝH and SHÂBEE,* the concurrence of the companions does not bar the opposite exposition, so admitted. With respect, however, to expositions which have no other authority than part of the *Tabi'een*, there are two reports of the sentiments of ABOO HUNEFAH. One, that he did not consider such to be authoritative: and this appears to be the true doctrine. The other, contained in the *Nuwádir*,† states, that if some of the followers of the companions have given *Futwas* in their time, and have received from the latter a sanction to their disquisitions; as SHORÝH, HUSUN,‡ and MUSROOK BIN-I AJDÂ,|| their deci-

posed the most celebrated of the works known under the title of *Adáb ööl Kázee*, or duties of the *Kázee*; and is stated, in the *Kuṣṣf öö Zunoon*, to have died A. H. 261. A high encomium is added upon his composition; which is said to consist of 120 Chapters, replete with useful information. Several learned men have written commentaries upon it, of which the most esteemed is that of IMÁM ÔMUR BIN-I ÂBD-ÖÖL-ÂZZEEZ, commonly called HOUSÂM, the martyr, killed A. H. 536.

* The first was *Kázee*, the second *Mööṣṭee*, of *Koofah*, in the first century of the *Hijrah*; and they were esteemed two of the most learned men of their age. The former, whose name at length, is ABOO OMÝYAH SHORÝH BIN ÖÖL HIRÂS ÖÖL KINDEE, held the station of *Kázee*, at *Koofah*, for seventy five years, and died A. H. 78 or 80; after resigning his office the year before his death. The entire name of the latter is ABOO ÔMUR ÂÂMIR BIN-I SHURÂHEEL ÖÖ SHÂBEE, deriving his surname from the town of *Shâb*, in *Arabia*. He died A. H. 104.

† Ten different works of this name, (meaning, literally, *rare*, or *scarce*) are specified in the *Kuṣṣf öö Zunoon*; of which one was composed by IMÁM MOHUMMUD, the disciple of ABOO HUNEFAH; and is probably that here referred to. It is considered to be of less authority than his five other works, the *Jámá-i sugbeer*, *Jámá-i kubeer*, *Mubṣoot*, *Zeeádát*, and *Siyur*, which are well known, and frequently quoted, under the general designation of *Zábir öö Rawáýát*, the conspicuous reports.

‡ Vid. *Bib. Or. Tit. Hassan al Basri*.

|| A learned native of *Humáddán*, who became a convert to ISLÁM, during the life of MOHUMMUD; and died at *Koofah*, A. H. 62.

fions should be observed. It is thus written in the *Moheet*.*

“ If the concurrent opinion of the companions be not found in any case, which their followers may have agreed upon, the *Kázee* must be guided by the latter. Should there be a difference in opinion between the followers, let the *Kázee* compare their arguments and adopt the judgment he deem preferable. If, however, none of the authorities referred to be forthcoming, and the *Kázee* be a qualified jurist; (*Ahīl ḍol-Ijtihād*, literally, a person capable of disquisition;) he may consider in his own mind what is consonant to the principles of right and justice; and applying the result, with a pure intention, to the facts and circumstances of the case, let him pass judgment accordingly. But if he be not a qualified person, let him take a legal opinion from others who are versed in the law, and decide in conformity thereto. He should, in no case, give judgment without knowledge of the law; and should never be ashamed to ask questions for information and advice. It is further requisite that the *Kazee* attend to two rules: first, that when the three *Imāms* (ABOO HUNEEFAH, ABOO YOOSUF, and IMĀM MOHUMMUD) all agree, he is not at liberty to deviate from their joint opinion, upon his own judgment. Secondly, when the three *Imāms* differ, ABDŪLLAH-IBN-I MOBĀRUK † says, the *Kázee's* sentence is to be given according to the opinion of ABOO HUNEEFAH, because he was one of the

* There are three works of this title; all of which are quoted in the *Futāwā-i Ašūmzeere*; but the two others are distinguished by the addition of *Surukṣhe* or *Bōohānee*. The two latter will be mentioned in a subsequent note. The *Moheet*, here referred to, is supposed to have been written by MOŪLĀNĀ RUZZE ḌĀ' DEEN of *Nyṣṣāpoor*, who, in the notes prefixed by ḌĀYUD AHMUD-I HUMAYFE to an old copy of the *Hudūyah*, purchased at *Mukkab*, is said to have compiled the opinions of the followers of ABOO HUNEEFAH, in a regular series; whereas other compilers had blended them. This *Moheet*, however, is not extant in *India*, and is only known by quotations from it.

† One of the pupils of ABOO HUNEEFAH, surnamed MURŌOZER from *Muroo*, the place of his nativity. He was held in high veneration for his piety, and his tomb is said to be visited, at *Hut*, in *Arabian Irak*. (Vid. *Bib. Or. Tit. Abdjalla*). He died at the age of 63. A. H. 181, (*Mirāt Ḍol-Ašūm*).

immediate followers, and contemporaries, of the companions, and opposed them in his *futwas*. So it is in the *Mohet* of SURUKHSEE *.

“ If no precedent be found from ABOO HUNEEFAH and his disciples, and the case have been determined by subsequent lawyers, the *Kázee* is to abide by the judgment of the latter; unless there be a difference in their decisions, in which event the preference is left to his discretion. If not even a modern precedent be forth coming, the *Kázee* may exercise his own reason and judgment; provided he be conversant with jurisprudence, and have consulted with sages of the law. In the commentary of TAHÁVEE †, it is stated, that if the *Kázee* pass sentence on his own judgment, in opposition to the manifest letter of the law (*Nusf*), such sentence is not valid. But if the sentence be not contrary to the clear letter of the law, and the *Kázee*, after passing it, should change his opinion, his former judgment is, nevertheless, valid: though his future adjudications must be regulated by his recent opinion. This is the doctrine of the two elders (SHÁKYN, viz. ABOO HUNEEFAH and ABOO YOOSUF,) and IMÁM MOHUMMUD agrees with them, provided the second opinion of the *Kázee*, in such cases, be deemed by others preferable to the first. It is further stated (by TAHÁVEE), that if the ancient jurists

* The author of this work, which is extant, and held in high estimation, is stated, in the *Kufyf ool Zunoon*, to be SHUMS OOL AÍMMAH, ABOO BUKR MOHUMMUD, of *Surukht*, mentioned in a former note. The *Mohet-i Bóshaneh*, composed by BÉRHAN OOL DEEN, MAH-MUD BIN-I AHMUD, is also noticed in the *Kufyf ool Zunoon*; but without any particulars of the Author. He is mentioned by D'HERBELOT, under the title of *Sarakhsy*, as having been born at *Surukht*; and having gone from thence into *Syria*, where he superintended a College at *Alppo*; and died at *Damajev*, A. H. 571. His *Mohet* is known in *India*; and an incomplete copy is possessed by the court of *Nizámüt Adálut*; but it is less esteemed than that of SHUMS OOL AÍMMAH.

† IMÁM ABOO JÁFUR AHMUD BIN-I MOHUMMUD, of *Tabá* (a town in upper *Egypt*) is one among the numerous commentators of the *Jamá-i Sugheer* of IMÁM MOHUMMUD. He also wrote an abridgement of the doctrines of ABOO HUNEEFAH, and his two disciples, intitled *Mokhtafur-i Tabávee*. Both works are often quoted, as authorities; but are not known to be now extant. He is stated in the *Kufyf ool Zunoon*, to have died A. H. 371.

have formed different opinions upon any point, and their successors have agreed upon the opinion to be preferred; according to the two elders, this agreement does not remove the effect of the former difference; but IMÁM MOHUMMUD thinks it is removed thereby. SHÝKH ÖÖL ISLÁM SHUMS ÖÖL AÍMMAH SURUKHISEE, reports, however, that all the disciples of ABOO HUNEEFAH agree in opinion upon this point, and that a few of the learned only hold the continuance of the original dissent, notwithstanding the subsequent agreement. If the lawyers of one age concur in any particular doctrine, and a *Kázee*, in after times, differing in opinion from them, with an upright intention, pass an opposite judgment; some hold his so doing to be legal, provided there were an original difference among the learned upon the doctrine in question; whilst others deem it illegal, notwithstanding such original difference; but all agree upon the illegality of the opposite judgment, supposing no difference of opinion to have been at any time entertained upon the subject. In the *Futáwá-i Ítábiyah* :* it is stated, that if a *Kázee* take an exposition of the law from a *Möftee*, and differ in opinion from the latter, he is to pass sentence in the case according to his own judgment; provided he be a person of understanding and knowledge; and that if the sentence be passed against his own opinion, in deference to that of the *Möftee*, it is according to the two disciples (SÁHIBÝN, viz. ABOO YOOSUF and IMÁM MOHUMMUD) invalid: in like manner as in matters of religious preference on presumption it is forbidden to act upon the judgment of others: but ABOO HUNEEFAH holds the sentence to be valid in such cases, as it is the result of legal disquisition. Supposing the *Kázee* not to have exercised his own reason on the case, at the time of his giving judgment according to the opinion of the *Möftee*; and that he subsequently forms an opinion, at vari-

* The author of this work, ABOO NUSR AHMUD BIN-I-MOHUMMUD ÖÖL ÍTÁBEE, of Bekhárá, is mentioned in the *Kutub ü Zuhra* as having also written a commentary on the *Jámá-i Sagheer* of IMÁM MOHUMMUD. He died A. H. 586.

ance with that of the *Mösftee*, IMÁM MOHÜMMUD says, his sentence is liable to abrogation; but ABOO YOOSUF affirms, it is not affected thereby; in the same manner as it would not be affected if the *Kázee* had passed sentence on his own opinion, and had afterwards changed that opinion. The foregoing is copied from the *Tátár kháneyah*.*

“ WHEN there is neither written law, or concurrence of opinions, for the guidance of the *Kázee*, if he be capable of legal disquisition, and have formed a decisive judgment on the case, he should carry such judgment into effect by his sentence, although other scientific lawyers may differ in opinion from him; and should not be governed by their sentiments, in opposition to his own: for that which, upon deliberate investigation, appears to be right and just, is accepted as such in the sight of God. If however the persons, who declare an opinion different from that of the *Kázee*, be superior to him in science, and he consequently adopt their judgment, without questioning the grounds of it, from respect to their superior knowledge, ABOO HUNEEFAH admits the legality of his proceeding. ABOO YOOSUF and IMÁM MOHÜMMUD, on the contrary, do not allow it to be legal, unless he ultimately adopt their opinion as the result of his own judgment. This, at least, is one report: but another says, that the master and his two disciples held, respectively, the reverse of what has been mentioned. If, in any case, the *Kázee* be perplexed by opposite proofs, let him reflect upon the case, and determine as he shall judge right: or, for the greater certainty, let him consult other able lawyers; and if they differ, after weighing their arguments, let him decide, as appears just. Should they agree with each other, but differ from his own opinion on the case, he is to adhere to the latter until he be convinced it is ill founded, and may give judgment accordingly; but not precipitately, or

* Vid. *Lib. Or. Tit. Tatarikæ*. An imperfect copy of the work referred to, entitled *Emüw-i Tatarikæ-jah*, is in the possession of the court of *Nisámüt Adálet*.

until he has duly weighed and examined the whole of the circumstances and evidence. Let him not fear or hesitate to act upon the result of his own judgment, after a full and deliberate examination: but let him beware of a doubtful and conjectural decision, without complete investigation, as such will not be approved in the account of his actions to God; though, from want of certain information to the contrary, it may pass as a valid sentence among men. What has been here said supposes the *Kázee* to be a *Möjtahid*, or scientific jurist, competent, from his talents and learning, to undertake legal disquisition. If he be not a person so qualified, but possesses a knowledge and full recollection of the points and cases determined by the eminent lawyers of his persuasion, let him give judgment according to the tenets of those in whom he confides; and whom he believes it right to follow. Should he not have a perfect recollection of decided law-points, let him act upon expositions of the law, by *Möjtees* of the orthodox doctrine; or if there be only one such *Möjtee* on the spot, his single exposition may be acted upon, without fear of imputed deficiency. It is thus written in the *Budáyi-á*.*

“ THE legal meaning of *Ijtihād* is the diligent exercise of the mental faculties in search of the thing desired: and the requisite qualification of a *Möjtahid* is a discriminative knowledge of what is contained in the book of God, and in the traditions from the Prophet, relative to legal rules and ordinances. (*ahkām*). It is not essential that he should also know the moral precepts and admonitions included therein. It has been likewise declared that a person, whose general rectitude exceeds

* A commentary on the *Tahfut ool Fekahá*, of SHÁKH ÁLA OO'DREEN MOHUMMUD, of *Sumurkund*, by his pupil, ÁBOO BUKR, BIN-I MUHÁMOOD, of *Kájbún*, in *Peishan Liák*. The author of the *Kusbf'oo Zoonun* states the death of the latter to have been A. H. 587; and adds, the master was so well pleased with the comment of his scholar, that he gave in marriage to the latter his daughter FÁTIMAH, who was also learned in the science of jurisprudence. The entire name of the commentary is *Budáyi-á oo'Sunáyi-á fee turteeb oo'Shmáyi-á*. Both the text and comment are quoted as authorities; but neither is known to be now extant in India.

MUMMUD; whose most celebrated law-tracts, entitled the *Jamâ-i-fugheer*, *Jamâ-i-kubcer*, *Mubfoot*, *Zecâdât*, and *Siyur*, have been already noticed, as collectively quoted by the title of *Zâhir o' ruxâyâl*.* These works are described in the *Kushf-o' Zunoon* as being of the first authority for the opinions of ABOO HUNEFAH and ABOO YOOSUF,† as well as of IMÂM MOHUMMUD. Various commentaries are also stated to have been written upon them during the early ages of the Mohummudan era; and several are quoted in the *Futuwâ i-Âalumgeeree*, compiled in the reign of AÛRUNGZÉB.‡ But neither the texts, or comments, are now known to be in India, except an imperfect copy of the commentary of KÂZEE KHÂN, on the *Jamâ-i-fugheer*, which was obtained from the library of the Nuwab

* Mr. HAMILTON (in his Preliminary Discourse, p. 36,) has inadvertently stated the *Jamâ-i-kubcer* to be a collection of traditions, called also the *Jamâ-i-fikreeh*, by YERBOO MOHUMMUD BIN YFSOO AL TFRMAZI. The apparent origin of this mistake has been pointed out in a former note. He further remarks that the author of the *Jamâ-i-fugheer* is uncertain. But independently of numerous other authorities, IMÂM MOHUMMUD is expressly cited in the *Hidâyab* as the author of both works, and of the *Mubfoot*. (See Vol. I. of the translation, p. 153). Mr. HAMILTON has been led into another error, by supposing the *Mubfoot*, quoted in the *Hidâyab*, to have been written by FUKR-ÖL ISLÂM BUZDUVEE; whereas, of the two *Mubfoot* cited by the author of the *Hidâyab*, one is the composition of IMÂM MOHUMMUD, above noticed; and the other was composed by SHUMS ÖL AIMMAH SURUKHEE, as observed in a preceding note.

† The only work known to have been composed by ABOO YOOSUF is an *Adab ö'l Kâzee*; and the reputation of this has been superseded by the celebrity of KHUSAF's tract of the same title, already mentioned. He is said, however, to have furnished his pupil, IMÂM MOHUMMUD, with notes (*amâlce*) for a considerable part of his compositions; particularly for the *Jamâ-i-fugheer*.

‡ The principal commentators of the *Jamâ-i-fugheer* are SHUMS ÖL AIMMAH SURUKHEE; ABOO BUKR AHMUD RÂZEE, commonly called *Jusâs*, (the plasterer); ABOO JÂFUR AHMUD TAHÂVEE; FUKR ÖL ISLÂM ÂLEF BUZDUVEE; ABOO NUSUR AHMUD ÖL ÎTÂBEE, of *Bokhârâ*; ABÖL LÛS NUSUR, of *Samarkand*; ABOO NUSUR AHMUD, ISBEJÂEFF; HUSUN BIN-I-MUNSOOR, of *Oûzjund*, better known by the appellation of KÂZEE KHÂN; TÂJ Ö' DEEN ÂBD ÖL GHUFUR KURDUREE; ZUHEER Ö' DEEN AHMUD TUMURTASHEE; and KÂZEE MUSKOOD, of *Yuzd*; and ABOO ÂEED MOÖYUNUR, of the same city; whose commentary is quoted by the title of *Tubzerb*. The seven persons first mentioned have also written comments on the *Jamâ-i-kubcer*; besides KÂZEE ABOO ZÂD ÂEDÖLLAH, of *Duboes*; BOÖRHÂN Ö' DEEN MAHMOOD, author of the *Mubeet-i-Böörhânee*; BOÖRHÂN Ö' DEEN ÂLEF, author of the *Hidâyab*; SHUMS ÖL AIMMAH MOHUMMUD, called *Hulw'ee* (the confictioner); ISN-I-USDUK JOÖRJÂNEE; and JUMÂL Ö' DEEN MAHMOOD, of *Bokhârâ*, whose common designation is HUSEEREE (the mat-maker); and whose second commentary is often quoted by the name of *Tukreer*. The *Tukreer* and *Döörin* are also known comments on the work in question; the former by ABÖL ÂBBÂS AHMUD; the latter by NÂSIR Ö' DEEN MOHUMMUD, of *Damofus*.

of *Oldh*; and is in the possession of the *Nizámut Ádálut*. Nor is there a treatise on the Mosulman law, written during the four first centuries of the *Hijrah*, at present, in the possession of any person, from whom inquiry could be made upon the subject, at *Calcutta*.*

THE oldest work on jurisprudence in the possession of the law officers of the *Nizámut Ádálut*, and other learned Mosulman lawyers, in *Calcutta*, is the *Mokhtusur öf Kudooree*, a compendium, or general law-tract, composed by IMÁM ABÖÖ'L HOSÉN AHMUD, of *Kudoor*, a quarter of *Bughdád*, who died A. H. 428. It is often referred to in the *Hidáyah*, and described in the *Kushf oo' Zunoön* as a book of authority in general use, and held in the highest estimation. It is said to contain twelve thousand cases; and has been illustrated in numerous commentaries; among which several are quoted in the *Futáwá-i-Áílumçecree*; but are not now known to be extant in *Hindoostan* †. *

The *Mokhtusur* or compendium, of *Kudooree*; and commentaries upon it.

THE

* It does not appear that any work on jurisprudence was published during the first century of the *Hijrah*: or that any was written on the doctrines of ABÖÖ HUNEFÁH, during the second century, except the treatises, which have been noticed, of his two disciples ABÖÖ YÖÖSUF, and IMÁM MOHUMMUD. In the third and fourth centuries, besides commentaries on the works of the latter, (which as fundamental authorities, are denominated *Ofoq*, or *Original*) the following law-tracts are stated to have been composed; and are briefly described in the *Kushf oo' Zunoön*. An *Adub öf Kázee* and *Nuwádir*, by MOHUMMUD BIN-I-SUMÁAH, who died A. H. 233. Another treatise, of the former title, by ABÖÖ HÁZIM ÁBD ÖL HUMÉD, who died in 292. Several treatises of the latter title, by ISN-I RÖSTUM, HISHÁM, and others. Also books of both titles, and a compendium of the law, entitled *Mokhtusur-i Tabávee*, by ABÖÖ JÁFUR AHMUD of *Tabá*, in Egypt, who died A. H. 371; and who seems to be the author erroneously cited by the name of ABÖÖ FAKA, in Mr. HAMILTON's Prel. Dis. p. 38. Another compendium, entitled *Mokhtusur-i Kurkb*, by ABÖÖ'L HUSÁIN ÁBDÖÖLLAH, of *Kurkb* (a ward in the city of *Bughdád*) who died A. H. 340. And a *Nuwádir*, with two other books, entitled *Oázem* and *Nuwázil*, by ABÖÖ'L LYS NUSUR, of *Sumurkund*.

† The titles and authors of the principal commentaries are as follow. The *Sirdj-i-Wubbáj*, and *Jubburab-i-nýjýráb* (the latter abridged from the former) by ABÖÖ BUKR BIN-I-ÁLÉF, commonly called *Iluddáee* (the blacksmith.) AHMUD BIN-I-MOHUMMUD also made an abridgement of the *Sir j-i-Wal-hij*, which is quoted by the title of *Bubur-i-Zábbir*. The *Möoltumus öf ikkruán* by ABÖÖ'I. MÁÁLEE, of *Ghuzná*. The *Kifýab*, by SHUMS ÖL AIMMAH ISMÁEL, of *Býbrk*. The *Hyán*, by MOHUMMUD BIN-I-RUSÖÖL, of *Tókkát*. The *Lábáb* by JULÁL ABÖÖ SÁSED MÖÖTUMUR, of *Buzdab*. The *Tundóbee*, by BUDR ÖÖ' DEEN MOHUM-

MUD,

Two descriptions of books in use for expounding the Mohummudan law: elementary and practical.

THE other Books in actual use for expounding the Mohummudan law are of two descriptions. The first consist of text; and comments, which, in a scientific method, state the elements and principles of the law; establish them by proofs and reasoning; and illustrate the application of them by select cases, real or supposed; such as the *Hidāyah*, *Kunz ō' dukā-yik*, *Vikāyah*, *Nikāyah*, and *Ashbah ō' Nuzāyir*, with their respective commentaries. The second description is commonly, but not always, distinguished by the title of *Futāwā*; and is, for the most part, a collection of law-cases, arranged under proper heads, with a short recital of facts and circumstances, without arguments, and with authorities only for the cases as quoted; being intended chiefly for practical purposes; whereas the elementary works first mentioned are more calculated for study and instruction. The *Futāwā-i Kāzee Khān* by FUKR ŌO' DEEN HUSUN, of *Olzjund*, in *Furghānā*, who was contemporary with the author of the *Hidāyah*, and whose collection is esteemed of equal authority with that celebrated work, must, in some measure, be excepted from the above remark; as it illustrates many cases by the proofs and reasoning upon which the decision of them is founded.*

Futāwā-i Kāzee Khān.

Other *Futāwā* extant in India.

THE other *Futāwā* extant in India, besides those already mentioned in the preceding pages and notes, are the *Khuzānat*

MUD, of *Uzbegkeelah*. The *Khulāfat ō' duldul*, by HOSĀM ŌO' DEEN ĀLEE, of *Makkah*. The last mentioned commentary is highly praised, for its utility, in the *Kushf ō' Zunoon*, and is stated to have been further improved by the annotations of IBN-I SUBEHL ŌO' DEEN ŌMĀN, a native of *Tartary*. Mr. HAMILTON, (in his *Prel. Disc.* p. 36, 37) has erroneously mentioned the commentary of KUDORRE, as quoted in the *Hidāyah*, instead of his *Makhtufur*. He appears to have made a further mistake in stating the commentary of KUDORRE to be upon the *Adab ōl Kāzee* of ABŌ YŌOSUF, whereas no comment of that work is noticed in the *Kushf ō' Zunoon*; but *Kudorre* is specified as one of the commentators of the *Adab ōl Kāzee* of KHUSĀF, mentioned in a preceding note.

* A complete and accurate copy of the *Futāwā-i Kāzee Khān*, supposed to have formerly belonged to the royal library, is among the books of the *Nizāmat Adālat*, obtained from *Lukhnow*. The author of the *Kushf ō' Zunoon* and the present *Kāzee ōl Kāzā*, concur in extolling this work, as replete with cases of common occurrence, and consequently of particular utility for practical reference. A digest (*Murattab*) of the cases recited in it is also mentioned in the *Kushf ō' Zunoon*, as made in the seventh century of the *Hijrah*, by a learned Syrian, named MOHAMMUD BIN-I-MŌSTUFĀ SPUNDEE, and entitled *Wubhāj ō' Sharcefat*.

öl Mōṣṭfiḥen, Futāwā-i-Buzāziyah, Futāwā-i-Nukṣabundiyaḥ, Mun'h öl ghufār, and Mokhtār öl Futāwā, by unknown authors; the *Fōṣṣol-i-Iṣṭurooshee*, by MOHUMMUD BIN-I MAHMOOD, who compiled it in the 625th year of the *Hijrah*;* the *Futāwā-i-Ibrahīmshahiyaḥ*, by SHAHĀB Ū' DEEN AHMUD, a native of *Hindoostan*, who composed it for SULTĀN IBRAHEEM SHĀH, at *Jōunpoor*, in the 9th century of the *Hijrah*†; and the *Futāwā-i-Ālumgeeree*, compiled at *Dehly*, by order of the Emperor AURUNGZĒB (also called ĀLUMGEER) in the 11th year of his reign, corresponding with A. H. 1067.

The *Hidāyah* is so well known, from the English version of it, made by Mr. CHARLES HAMILTON, and published in the year 1791, that it will be unnecessary to say much of it. The *Kāzee öl Kōōzāt*, in his catalogue of books already adverted to, describes it in the following terms. “ The *Hidāyah* is a com-
 “ mentary upon the *Bidāyut öl Mōṣṭtudee*, and both the text
 “ and comment were composed by SHĒKH BŌURHĀN Ū' DEEN
 “ ĀLEE, son of AḤOO BUKR, of *Murghcenān*, who lived to the
 “ age of sixty-two; and, after employing thirteen years in the
 “ composition of the latter work, departed from this world
 “ A. H. 593. The general arrangement, and divisions of it,
 “ are adopted from the *Jāmā-i-Sugḥeer* of IMĀM MOHUMMUD.
 “ It is celebrated amongst the learned for its selection of law
 “ cases, and connection of them with the proofs and arguments
 “ by which they have been determined. Wherefore in every

The *Hidāyah*,
and its com-
mentary.

* The court of *Nizāmut Adālut* have a complete copy of this compilation, presented to them, with six other law books purchased at *Lahore*, by the *Kāzee öl Kōōzāt*, MOHUMMUD NUJM Ū' DEEN. It consists of thirty sections, upon *Majmū'at* only: like the *Fōṣṣol öl Imādeeyah*, beforementioned. The contents of both were arranged and incorporated in a collection, entitled *Jāmā öl Fōṣṣalyn*, by BUDR Ū' DEEN MAHMOOD; better known by the name of IBNI-KĀZEE-I-SUMĀWUNAH, who died A. H. 823. The author of the *Kuṣṣf oo' Zunoon* states this work to be in great estimation with the learned, as a civil digest; but, though often quoted as an authority, it is not known to be at present in *India*.

† IBRAHEEM SHĀH reigned at *Jōunpoor* (during the confusion of the Empire of *Dehly*, consequent to the invasion of *Tymoor*) for forty years, and died A. H. 844. The court of *Nizāmut Adālut* possess an entire copy of the work referred to; but it is a mixed collection, and not deemed authoritative.

" age it has been esteemed by lawyers ; many of whom have
 " written comments and annotations upon it." It is spoken of
 in nearly the same language, by the author of the *Kushf-oo'-*
Zunoon, who adds " it is a rule observed by the composer of
 " this work to state first the opinions and arguments of the
 " two disciples (ABOO YOOSUF and IMÁM MOHUMMUD) ; after-
 " wards the doctrine of the great IMÁM (ABOO HUNEEFAH) ;
 " and then to expatiate on the proofs adduced by the latter, in
 " such manner as to refute any opposite reasoning on the part
 " of the disciples. Whenever he deviates from this rule it
 " may be inferred that he inclines to the opinion of ABOO
 " YOOSUF and IMÁM MOHUMMUD. It is also his practise
 " to illustrate the cases specified in the *Jamá-i-Sugh'er*,
 " and by KUDOOREE : intending the latter, whenever he
 " uses the expression *he has said in the book*. In praise of
 " the *Hidáyah*, it has been declared, like the *Korán*, to have
 " superseded all previous books on the law ; that all persons
 " should remember the rules prescribed in it ; and that it
 " should be followed as a guide through life." This eulogium
 on the *Hidáyah* is confirmed in a paper written by MOÚLAVÉE
 MOHUMMUD RÁSHID, one of the *Móoftees* of the Supreme Court
 of Judicature and Courts of *Sudr Deewánee* and *Nizámut Ádálut*,
 as well as one of the most learned Mosulmans in India ;
 who remarks on the text, and some of the principal com-
 ments, to the following effect. " No text or commentary,
 " now extant, can be compared with the *Hidáyah* as a
 " digest of approved law cases, illustrated by the proofs and
 " arguments which establish them. It is therefore, with its
 " comments, fit to be the standard of legal decision in the pre-
 " sent times. Many commentaries have been written upon
 " it : but four only, the *Niháyah*, *Ínáyah*, *Kifáyah*, and *Fut'b ól*
 " *Kudeer*, are forthcoming in Bengal. The *Niháyab* was first
 " composed : and has superior credit as being the original from
 " which the others have borrowed. But the author of the
 " *Ínáyah* has merited esteem by his studious analysis ; and
 " interpretation

“ interpretation of the letter and meaning of the *Hidāyah*. The
 “ *Kifāyah* also deserves commendation, from its concise state-
 “ ment of the substance of other commentaries, as well as
 “ from some additions to them. And the *Futūḥ ḥi Kudeer* is
 “ preferable to the whole, as an ample collection of cases,
 “ (rendering it equal in this respect to a *Futūwā*) expressed
 with suitable brevity of language.*

THE *Kunz ḥi dukūyik* has been already mentioned; as com-
 posed by HĀFIZ Ḥ' DEEN, author of the *Kāfee* and *Wāfee*. It
 is a short general treatise of law, used in Moslem Colleges, as
 an elementary book of instruction; but superseded, as a book
 of reference for legal exposition, by its commentaries; of which
 the following are extant in India. The *Tubiḥen ḥi hukūyik*,
 by FAKR Ḥ' DEEN ABOO MOHAMMUD ḤSMĀN of *Zylā*, who died
 A. H. 743. His comment is valued by the followers of

The *Kunz ḥi
 dukūyik*, and its
 commentaries.

The *Nihāyah* was composed by HOSĀM Ḥ' DEEN HOSĀN IBN ḤLEE, said to have been
 a pupil of BĪRḤĀN Ḥ' DEEN author of the *Hidāyah*. The latter having, from some unknown
 cause, omitted the law of inheritance, it has been added by the commentator. But this part
 of the *Nihāyah* does not appear to have obtained equal celebrity with the *Furā, tex-i-firaj* yab
 mentioned in a former note. The *Kuḥf ḥi Zuhūr* notices two commentaries of the title
 of *Nihāyah*; the first of which was commenced by AḤḤ'L ḤBAS AHMUD, a *Kāzee* in Egypt,
 who died A. H. 710; and was completed in the succeeding century of the *Hijrah* by KĀZEE
 ḤĀLED Ḥ' DEEN, of *Dabur*. The second, which is that referred to as extant in India, was
 composed by SHYKH AKMUL Ḥ' DEEN MOHAMMUD, who died A. H. 786; IMĀM Ḥ'
 DEEN AMER KĀTIB BIN-I AMER ḤMUR, who had previously written another com-
 mentary entitled *Ghāyutūl byān*, after employing himself for twenty seven years at Cairo, and
 other places, to render his second work more complete, finished the *Kifāyah*, at *Damascus*,
 in the 747th year of the *Hijrah*. The *Futū ḥi Kudeer* is stated to have been commenced
 by its author KUMĀL Ḥ' DEEN MOHAMMUD of *Sereus*, commonly called IBN-I-HOMĀM,
 in the 29th year of the *Hijrah*; and to have occupied a considerable part of the re-
 maining period of his life, which was terminated in 861. Other commentaries upon the
Nihāyah are mentioned in the *Kuḥf ḥi Zuhūr*; but as they are not procurable in
 India, it will be sufficient to notice the *Furwāed*, by HUMEED Ḥ' DEEN ḤLEE, of
Bekbārā, who died A. H. 667; and is supposed by some to have been the first com-
 mentator; but his tract, being extremely brief, has been superseded by the subsequent
 comments; the *MiḤĀJ ḥi DIRĀYUT*, by KUMĀM Ḥ' DEEN MOHAMMUD, also of
Bekbārā, who died A. H. 747; and whose commentary is quoted in the *Ālūmgeer*.
 And the *Ḥḍab* by KUMĀL Ḥ' DEEN MOHAMMUD, also quoted; though it is described as
 rather an abstract, than a comment; being a methodical collection of the law cases con-
 tained in the *Hidāyah*, without the arguments stated in proof of them. The *Nihāyah*,
ḥi Kifāyah, by TĀJ Ḥ' SHUREYUT ḤMUR, is also mentioned in the *Kuḥf ḥi Zuhūr*
 as a commentary on the *Hidāyah*; but the *Kāzee ḥi Kāzūt*, in describing an imperfect
 copy of it, belonging to the *Nizānut Ḥḍūt*, terms it a *Ḥāḥḥee*, or marginal note book.
 An incomplete copy of the *Kifāyah* is also among the law books of that court.

ABOO HUNEEFAH, as containing a complete refutation of the opposite doctrine of SHAFI'EE. The *Buhr öö' ráyik*, by the learned ZÝN ÖÖL ÁÁBIDEEN IBN-I NUJEEEM of Egypt, left incomplete, at his death, A. H. 970; and unequally finished by his Brother SIRÁJ ÖÖ' DEEN ÖMUR, who also wrote a commentary entitled the *Nuhr-i-fáyik*, but of inferior merit to that of ZÝN ÖÖL ÁÁBIDEEN; which is held in the utmost estimation; and is spoken of in the *Kushf öö' Zunoön* as equalled only by the *Futb, ööl Kuddeer*, IBN-I HOMÁM's commentary on the *Hidáyah*. The *Mutlub-i-fáyik*, or, as more generally called *Áynce*, by BUDR ÖÖ' DEEN MOHUMMUÖ ÁYNEE, of *Dubur* in *Arabia*. This commentary is also esteemed, as containing an ample collection of law cases: and though surpassed, in this respect, by the *Buhr-i-ráyik*, it has the advantage of having been brought to a conclusion by the author; whose erudition obtained him the title of *Ülámah*, in common with ZÝN ÖÖL ÁÁBIDEEN.*

The *Vikáyah*,
and commentaries.

THE text of the *Vikáyah*, composed in the 7th century of the *Hijrah* by BOÖRHÁN ÖÖ' SHUREEÖT MAHMOÖD, son of the first *Sudr öö' Shureeöt*, like that of the *Kunz öö' Dukáyik*, has been superseded, for legal consultation, by its more extensive commentaries; especially by that of the second *Sudr öö' Shureeöt*, ÖBYD ÖÖLLAH BIN-I-MUSÁÖÖD, who died A. H. 750; distinguished by the title of *Shurh-i-Vikáyah*; and combining, with the original treatise, an ample comment in illustration of it. But both are used in Mosulman Colleges, for instruction in the Science of law, preparatory to the study of the *Hidáyah*; upon which the *Vikáyah* is founded; being, as its title at length im-

* Another commentary on the *Kunz öö' Dukáyik*, entitled, *Madda*, is known in *India*. But the name of the author has not been ascertained. The *Kudáb*, by SHÝFÝH YÁHTÁ, and *Kunz ööl Hukáyik* by KÁZEE BUDR ÖÖ' DEEN MAHMOÖD, are also noticed, with the names of some other commentators, in the *Kushf öö' Zunoön*; but they are not celebrated, or quoted as authorities. The court of *Nizamut Áddul* possess an incomplete copy of the *Buhr öö' ráyik*; on which the *Káshf ööl Kuddeer* remarks (in his catalogue) that "it comprises a compilation of cases, general and particular; with the useful results of the author's researches upon a variety of legal questions; and is received as authentic by the followers of ABOO HUNEEFAH in every city of *Íslám*."

ports, (*Vikāyat* ḍḍ' *riwāyah*, see *Musāḥel il Hidāyah*;) the *Custos*, guardian; or preserver, of the reports of cases in the *Hidāyah*. Other commentaries are mentioned in the *Kushf ḍḍ' Zunoon*; but they are not known to be extant in India; or quoted as authorities*.

THE *Nikāyah* was abridged from the *Vikāyah* by the second SUDR ḍḍ' SHUREE'ŪT, already mentioned as the principal commentator on the *Vikāyah*. It is also called *Mokhtufur-il-Vikāyah*, and used as a book of instruction; the rules and cases contained in it being committed to memory by the Student. But its utility, for legal reference, is superseded by its commentaries; of which three are extant, composed by ABŌŪL MUKĀRIM BIN-I-ĀBDŪLLĀH, A. H. 907; by ĀBDŪL ĀLEE, BIN-I-MOHUMMUD, BIRJINDEE, in the year 935; and by SHUMS ḍḍ' DEEN, MOHUMMUD, of *Khorisān*, in 941. The whole of these comments are held in esteem; but the latter, entitled *J mā ḍḍ' rumooz*, is the most copious†.

The *Nihāyah*,
and comments.

THE *Ashbāh o Nuzāyir* is an elementary treatise, composed in

The *Ashbāb*

* Numerous *Ilwāḍḍīee*, or books of annotation, have also been written on the text and commentaries; of which the most celebrated is the *Hāḍeeh* of YOUSUF BIN-I-JOWD, commonly called A'KKEE CHULFEE. This work, entitled *Zubkharat ḍḍ' Olḥa* is in the possession of the court of *Nizāmat Adālat*, who have also a correct and complete copy of the *Shurh-il-Vikāyah*. It may be useful to add that a Persian translation of the latter has been made by a person named ĀBD-ŪL HUK, SUJĀWUL, of *Sarhind*; who, in his preface, states it to have been completed A. H. 1076; during the reign of AḌAUNGZĀ. A copy of this version is in my possession. The language is not elegant; but it bears the character of accuracy; and with a careful revision, it may deserve publication. In bulk it does not much exceed a fourth of the Persian Version of the *Hidāyah*, made by the former chief *Kāzee*, GHOLĀM YUHTĀ KHĀN, and his learned associates, employed for that purpose under the patronage of Sir. HASTINGS; a revised edition of which, under the superintendence of MOŪLAḌE MOHUMMUD RĀSHID, is now printing, at my suggestion, by order of Government; and besides facilitating the study of the Arabic text, will tend to explain and correct the English translation; which, though on the whole deserving of praise, has been found in some parts inaccurate, and in many less intelligible than the Persian Version. It may be proper to add in this place, that in noticing, for obvious reasons, what has appeared upon inquiry to be erroneous or deficient in the late Mr. HAMILTON's translation of the *Hidāyah*, no intention whatever is entertained of impeaching the personal merits or reputation of that gentleman; who laboured under a material disadvantage in not having completed his assiduous and laudable undertaking in India.

† Complete copies of the three commentaries are among the books procured from *Lukhnaw*, for the court of *Nizāmat Adālat*.

the

*of Nuzayir, and
its commenta-
ries.*

the tenth century of the *Hijrah*, by ZYN ŌOL ĀĀBIDEEN, already mentioned as the author of the *Buhr-i-rāyik*. It is stated in the *Kushf ōō Zunoon* to consist of seven sections, (denominated *fun*); the two first of which relate to the general principles and rules of law; and the *Kāzeḡ ōol Kōōzāt*, in describing a copy of it, which belongs to the *Nizāmūt Ādālūt*, observes, that “ al-
“ though a short tract, it contains legal *principia*, from which
“ numerous cases may be deduced; wherefore to able lawyers
“ it is of the utmost advantage.” Thirteen commentaries upon it are noticed in the *Kushf ōō Zunoon*, but none of them are known to be in India *.

*The Mujmā ōol
buhryn and
commentary.*

BESIDES the texts and commentaries above described, as in actual use for legal expositions, the *Mujmā.ōol buhryn*, a text book composed by MOZUFFUR CO'DEEN AHMUD, of *Bughdad*, A. H. 690; is also in the possession of a learned Mosulman in *Calcutta*,† together with one of its commentaries, written by ĀRD ŌŌ LUTEEF BIN-I-ĀRD ŌOL ĀZEEZ; but as no other copy of either the text or comment is known to be forthcoming; they cannot be in general use.‡

Or

* MOŪLAVER MOHUMMUD RĀSHID possesses two commentaries on the *Aḡbāḡ e Nuzayir*, one of which, called the *Shumzōol Ōyoon*, was written by SY YIP AHMUD BIN-I-MOHUMMUD HUMAYER. The author of the other is unknown.

† MOŪLAVER KURSEM ŌŌ DEEN, by whom (in concert with MOŪLAVER MOHUMMUD RĀSHID) I have been materially assisted in preparing the short account given of books on the Mohummudan law; and who has made for me a complete Persian translation, from the Arabic original, of the *Kushf ōō Zunoon*. He received the *mujmā.ōol buhryn*, and its commentary, from SHURĀFUT MOHUMMUD KHĀN, *Meer Moossee* to the NUWĀS MOZUFFUR JUNG; who supported a *Mudrūsah* at *Moorśhidābād*, in which KURSEM ŌŌ DEEN was *Modarris*, or Lecturer.

‡ In addition to the books on jurisprudence, which have been noticed; the following are described in the *Kushf ōō Zunoon*; but none of them are known to be at present in *Hindustan*. The *Ajās and Akām*, by ASŌOL ĀBĀS AHMUD NĀṢER, who died A. H. 445; the *Fujneet e Muneed*, by the author of the *Hidāyah*; the *Hāḡe ōol Husceer*, by MOHUMMUD-BIN-I-ISRĀHEEM, of *Huseer*, who died A. H. 505. The *Rāḡawā-i-kābrā* by SHAHERD HISĀM ŌŌ DEEN ŌMUR, who suffered martyrdom in the 530th year of the *Hijrah*. The *Khalāṡ ōol Jūdawā*, by TAḤIR BIN-I-AHMUD, of *Bekbārd*, who died A. H. 542. The *Māḡlukt*, by NĀṢIR ŌŌ DEEN, ASŌOL KĀSIM, of *Sumurkūnd*, finished A. H. 549. The *Hāḡe ōol Kōḡḡe* by KĀZER JUMAL ŌŌ DEEN AHMUD of *Ghuznā*, who lived in the latter part of the 6th century of the *Hijrah*. A *Talkhees* (abridgement) of the *Jāmā-i-lubeer*, by KUMĀL ŌŌ DEEN MOHUMMUD.

of

Of the books of *Futāwā* which have been mentioned, none appear to require further notice, except the *Futāwā-i-Ālumgeeree*. Mr. HAMILTON, by an extraordinary mistake, has stated this work to have been "composed in the *Persian Language*," by the authority and under the inspection of the "Emperor AURUNGZEB;" whereas it is well known to have been written in *Arabic*, the usual language of Mohummudan law and science; and to have been translated into *Persian*, by order of the Emperor's daughter, the Princess ZEB ō' NISĀ. Several copies of the *Arabic* original are in *Calcutta*; and some imperfect copies of the *Persian* version; or rather of parts of it. In the catalogue of books appertaining to the *Nizāmut Ādālut* (among which is an incomplete copy of the *Arabic Futāwā-i-Ālumgeeree*) the *Kāzee ōl Kōzāt* describes this work in the following terms:—"It was commenced A. H. 1067, corresponding with the 11th year of ĀĀLUM-

of *Khilāf*, who died A. H. 652. The *Mokhtār*, and its commentary, the *Ikhtiyār*, by MUJIB ō' DEEN ĀBUDŪLLAH of *Māṣūf*, supposed to have flourished in the 7th century of the *Hijrah*. The *Ghōṣṣur ōl Akhām*, and its comment, the *Dōṣṣur ōl ḥāṣṣām*, by MOHUMMUD BIN-I FURĀMOORZ, commonly called MOOLLA KHŌṢRO, who died A. H. 887; and the *Mōlluka ōl Abhoor*, by IBRAHEEM BIN-I-MOHUMMUD CHULPÉE (a Syrian) finished A. H. 923. Of these works the three last mentioned only are text books. The remainder (excepting the abridgement of IMAM MOHUMMUD's great *Jānā*), are collections of cases, of the nature of *Futāwā*. A further collection, entitled *Khuzannāt ōl futāwā*, by AHMUD BIN-I-MOHUMMUD, is among the Books of the *Nizāmut Ādālut*, and supposed by the *Kāzee ōl Kōzāt* to have been compiled towards the end of the 8th century of the *Hijrah*. Also a Persian compilation, named *Futāwā-i-Kutābhānee*, the cases included in which were collected by MOOLLA SUDR ō' DEEN BIN-I YĀKOB, and arranged, some years after his death, by KURĀ KHĀN, in the reign of SOOLTAN ILĀ ō' DEEN. The *Kāzee ōl Kōzāt* has likewise presented to the *Nizāmut Ādālut* a small Persian book, entitled *Mokhtār ōl Ikhtiyār*, written A. H. 971, by *Ikhtiyār* son of GHYĀS ō' DEEN HUSUN; containing, besides the duties of a *Kāzee* and *Mōṣṣee*, legal forms of various descriptions for practical use.

* Preliminary Discourse, p. 44.

+ Mr. H. COLEBROOK possesses a folio volume, containing about half of the entire translation, from the commencement to the book upon evidence. I have also a volume which contains from the book on marriage, to that upon endowments, or religious and charitable appropriations. And, at my suggestion, the Governor General in Council has been pleased to instruct the Resident at *Dibby* to endeavor to procure two or more complete copies of the Persian version made by order of ZEB ō' NISĀ, with a view to prepare a collated transcript, which may be hereafter printed and published. I have likewise a correct Persian translation of the book on *Jināyāt* or offences against the person, made for me, a few years since, by Mr. OLIVER SĀREED ō' DEEN, (now law officer of the *Burly* court of circuit) under the superintendence of his father, the *Kāzee ōl Kōzāt*, who has added notes of explanation where they appeared requisite. This version will probably be printed and published, as it well deserves to be.

" geer's reign. Credible persons have related, that when
 " MEERZÁ KÁZIM, author of the *Áalumgeernámah* had finish-
 " ed, and presented to His Majesty, the history of the first ten
 " years of the reign, it occurred to the King that there were
 " many books of history in the world; and that from the in-
 " clination which mankind have to read such books, they
 " are composed without orders from Kings and Nobles; that
 " the foundation of good government is justice; and that this
 " depends upon a knowledge of the ordinances of the law;
 " that although the learned of every age had compiled expo-
 " sitions of the law, yet in some instances the examples were
 " so dispersed that they could not readily be found, when
 " required; and in others, the cases of less weight were not
 " distinguished from those adjudged to be authoritative;
 " whilst some decisions also had been unnecessarily repeated;
 " and others, though requisite, had been omitted; wherefore
 " it was proper that, in the present reign, a new *Futáwá*
 " should be compiled, to be arranged in the most approved
 " manner; and to contain the most authoritative decisions of
 " law, including every useful case, which had been adjudged;
 " without repetition or omission. As soon as the King had
 " formed this design, he ordered MEERZÁ KÁZIM to discon-
 " tinue writing the *Áalumgeernámah*; and not to take in fu-
 " ture the sum allotted for it from the royal treasury. He
 " then assembled a number of eminent lawyers from the *Pun-
 " jáb*, the environs of *Sháhjahán-ábád*, *Akbur-ábád*, *Ilah-ábád*.
 " and the *Dukhun*; and employed them in compiling the
 " work, which was afterwards called the *Futáwá-i-Áalumgeeree*.
 " In truth no other *Futáwá* is equal to it in excellence. It has
 " become celebrated in every city, as well in *Arabia* as in other
 " countries; and is termed at *Mecca* the *Futáwá-i-Hind*, or
 " Indian expositions. It is esteemed by the learned of every
 " country, and is received as an authority for law decisions in
 " this empire." It is added, that six lacks of rupees are said to
 have

have been disbursed in stipends to the learned compilers, the purchase of books, and other expences attending the execution of the work.

THE *Futāwā-i-Ālūmgeerē* being four times the size of the *Hidāyah*, and containing little more than a recital of law cases, without the arguments and proofs, which are diffusively stated in the *Hidāyah*, it must possess an advantage over that work, for practical use, in its greater number of cases and examples. On the other hand, the full illustration of the law, its principles, and the different doctrines promulgated by some of the most eminent expounders of it, which distinguish the *Hidāyah*, give an evident preference to it as a book of elementary instruction. The authority of the *Hidāyah*, as an original composition by a celebrated jurist, who, from his superior knowledge and qualifications, was esteemed a *Mōjtāhid*, is also above that of the *Futāwā-i-Ālūmgeerē*; which, however valuable, as the latest and most comprehensive collection of cases, is held in less comparative estimation, from its being a modern compilation, made by several persons, of different judgment, and unequal ability. Without contrasting their respective merits, however, the one is universally admitted to be a most useful supplement to the other; and a conversefance in both, or an easy means of reference to them in cases of judicial occurrence, must be of essential use towards the due administration of the Mohummudan law, as far as that law is declared to be the established rule and standard of decision.* The following sketch of the criminal law will therefore be taken chiefly from the *Hidāyah* and *Futāwā-i-Ālūmgeerē*; the former supplying, in general, the rules and principles; the latter, in addition to what are specified by the author of the *Hidāyah*, any useful cases cited in illustration of them.*

The *Hidāyah* and *Futāwā-i-Ālūmgeerē* compared and distinguished.

Authorities for the following sketch of the criminal law.

THE

* Mr. HAMILTON's translation of the *Hidāyah* renders it unnecessary to state the general contents of that work. The *Futāwā-i-Ālūmgeerē* consists of 61 books (*Kutūb*) in the following order:—1. *Tabārus*, purification. 2. *Sulāt*, prayer. 3. *Zukāt*, alms. 4. *Sēm*, fasting. 5. *Hujj*,

THE provisions of the Mohummudan law, which have immediate reference to the definition and punishment of crimes, may be classed under three general heads, or principles of penal justice. I. *Kifās*, or retaliation; with it's appendage *Di-yut*, the fine of blood. II. *Huddood*; (plural of *hudd*;) prescribed or fixed penalties. III. *Tāzeer* and *Seeāful*; discretionary correction, and punishment.

5. *Hujj*, pilgrimage. 6. *Nikāh*, marriage. 7. *Ruḥāb*, fosterage. 8. *Tulāk*, divorce. 9. *Uḥd*, manumission. 10. *Aymān*, vows. 11. *Huddood*, fixed penalties. 12. *Surikah*, larceny. 13. *Shūr*, institutes or regulations concerning infidels, apostates and rebels. 14. *Luket*, foundlings. 15. *Lūktah*, troves. 16. *Ibāk*, absconding of slaves. 17. *Muflood*, missing persons. 18. *Shirkut*, partnership. 19. *Wakf*, endowment; or religious and charitable appropriation. 20. *Bḡā*, sale. 21. *Surf*, exchange of coin or bullion. 22. *Kufulut*, bail. 23. *Harwālut*, transfer of debts. 24. *Adub ōl Kāzee*, the duty of a *Kāzee*. 25. *Shahādut*, evidence. 26. *Rōjjo, ā un*, *Shahādut*, retraction of evidence. 27. *Fukālut*, agency. 28. *Dā*, claim. 29. *Ikrār*, acknowledgment. 30. *Sōl, b*, composition. 31. *Mozārūt*, copartnership in stock and labour. 32. *Wudee, āt*, deposit. 33. *Alāreeyut*, lending without return. 34. *Hibab*, gift. 35. *Ijārah*, hire and farm. 36. *Mokā'ub*, covenanted slave. 37. *Wulā*, connection of emancipator and freedman; or of patron and client. 38. *Ikrāb*, compulsion. 39. *Hujr*, inhibition and disqualification. 40. *Māzoon*, licensed slave, and ward. 41. *Ghāb*, usurpation. 42. *Shōrfāb*, right of vicinity. 43. *Kifmut*, partition. 44. *Mukā'at*, compact of cultivation. 45. *Mcā, āmulut* or *Mofākhāt*, compact of gardening. 46. *Zabḡut*, animals slain by *Zubb*, or incision of the throat. 47. *Qāzabeyah*, sacrifice. 48. *Kawābyut*, abomination, disapprobation, or censure. 49. *Tuburree*, presumptive preference. 50. *Iḡā ṣol murwāt*, cultivation of waste land. 51. *Shub*, right to water. 52. *Uḡbriyab*, intoxicating liquors. 53. *Syd*, game. 54. *Ribn*, pledge. 55. *Jināyāt*, offences against the person. 56. *Wuḡyāt*, testamentary bequests. 57. *Muhāzir ḡ Sijillāt*, judicial proceedings and decrees. 58. *Shā'raṭ*, legal forms. 59. *Hijul*, legal devices. 60. *Khōnfa*, hermaphrodite. 61. *Furāzeer*, rules of inheritance.

Of the sixty one books enumerated, fifty five correspond with similar titles in the *Hidāyah*. Two other books in the latter work, entitled *Di-yut* (the fine of blood), and *Mu, ākil* (exaction of the fine of blood), are included in the *Ālumgeeree* as chapters of the book of *Jināyāt*. The book of *Shirb* in the *Ālumgeeree* forms a section of the book entitled *Iḡā ṣol murwāt* in the *Hidāyah*. The remaining five books of the *Futawā-i-Ālumgeeree*, viz. those entitled *Tuburree*, *Muhāzir ḡ Sijillāt*, *Shā'raṭ*, *Hijul* and *Furāzeer*, are not included in the *Hidāyah*.

The general division and arrangement, of both the *Hidāyah* and *Ālumgeeree* appear to have been adopted from the *Jamā-i-Sugheer* of IMAM MOHUMMUD. The same order is also observed in most other works written by the followers of ASOO HUMMAH; and the author of the *Bubr-ō-rāyik* has endeavoured to shew that it is founded on a principle of successive connection. But his reasoning does not appear satisfactory. It may be useful to add, however, that the Mosulman law in the most extensive sense of the term (*Shurā*, or *Deen-i-islām*) comprehends the ordinances of religion, and the duties of man towards his Creator, as well as his rights and obligations towards his fellow creatures. It is therefore stated in the *Bubr-i-rāyik* to comprise five principal heads; namely, 1. *Iātikā-lāt*, articles of faith. 2. *Ībādāt*, acts of worship and piety. 3. *Modāmulāt*, affairs of life, or civil transactions. 4. *Mukājir*, punishments for the prevention of crimes. 5. *Ādāb*, manners, or rules of behaviour. In books of jurisprudence (*fiqh*) the first and last heads are omitted. The other three are included; and the head of *Ībādāt* always precedes the *Modāmulāt*, and *Mukājir*, as of superior importance.

THE crimes, provided for under the first general head are denominated *Jináyát*; or, in the legal sense of that term, offences against the person; but are restricted to homicide, poisoning, and wounding.* The second head includes adultery, or rather whoredom (*Zina*) whether between married or unmarried persons; slander of whoredom, (*Kuzuf*;) drinking wine, (*Shóorh*;) theft, (*Sarikah i-Soghrah*;) and robbery, (*Surikh-i-kobrah*). The third head comprizes all crimes not expressly falling within the laws of *Kifás* and *Hadd*, together with such as, though comprehended in the general provisions of those laws, are specially excepted from the operation of them, by some doubt, or legal defect (*Shóbbah*), which bars the adjudication of *Hadd* or *Kifás*.

Crimes provided for under each head.

HOMICIDE is either lawful and justifiable; or unlawful and penal. Justifiable homicide (*Kull-i-mobáh*) is not distinctly treated of in books of Mohummudan law; but is incidentally mentioned, as commanded in the advancement of religion, or justice; as authorized in the defence of person, or property; and for the prevention of an atrocious crime; or as exempted from the provisions against unlawful homicide in consideration of some circumstance of necessity or justification.

Justified homicide.

THE following instances of justifiable homicide are expressly noticed in the *Hidáyah*, *Futáwá-i-Álumgeeree*, or other authorities.

In what instances expressly stated.

1. IN prosecution of war against hostile infidels, for the advancement of *Islám*, or in support of a *Mosulmán* community. This is enjoined by the *Korán*; but the injunction for offensive warfare against unbelievers is considered to be sufficiently observed when it is carried on by any one

In prosecution of war against hostile infidels.

* *Kul*, *Kutá*, and *Juráb*. See Introd. to Book of *Jináyát* in *Hid.* and *F. A.*

tribe or party of *Mosulmans*, and it is not then obligatory upon the rest.*

Of an apostate
from the faith
of *Islám*.

2. OF an apostate from the faith of *Islám*; who, after being duly called upon, may persist in his apostacy. It is stated in the *Hidáyah*, that, "if any person kill an apostate, before an exposition of the faith has been laid open to him; it is abominable (*Mukáshh*). Nothing however is incurred by the slayer; because the infidelity of an alien (in a state of hostility, which apostacy is considered to be) renders the killing of him admissible; and an exposition of the faith, after a call to the faith, is not necessary."†

Of an insurgent
against the right-
ful *Imám*.

3. OF an Insurgent against the rightful *Imám*, when slain in the act of insurrection; or of open resistance to the established Government. The same justification is extended by ABOO HUNEEFAH and his disciples, to an insurgent killing a loyalist, in actual conflict, if the rebel maintain a plea of right in his rebellion; though ABOO YOOSUF, in this case, deems the slayer to be precluded from inheriting the property of the slain; and SHAFI'EE considers the rebel, killing a person of protected blood, to be liable to all the penalties of wilful homicide.‡

§

* *Hid. Book. Siyar. Chap. I.*

† The same Book contains the Institutions of *Móhýmud* for carrying on war against Infidels, and dividing the plunder taken from them; for making peace with them, and granting them protection on their engaging to pay the *Jizyah*, or capitation tax; for regulating this tax, as well as the two descriptions of land tax (*Orshoor* and *Khráj*;) for determining the rights of conquest over Infidels, or by them. The corresponding book of *Siyar* in the *F. Áálumgeeree* contains similar provisions; and the same subject is treated of in *SALÉ's* Prel. Disc. p. 142; but more fully by *RELAND* in his treatise *De jure militari Mohammedanorum*.

‡ Trans. of *Hid. Vol. 2. p. 227.* The law concerning apostates, whose person and property are deprived of legal protection during their apostacy; and who are not even admitted to the protection of a *Zimnee*, or Infidel subject; is explained, at length, in a chapter of the Book of *Siyar* entitled *Móortudd*, expressly appropriated to them, in both the *Hidáyah*, and *F. Áálumgeeree*.

§ See the opposite arguments of ABOO HUNEEFAH and his followers; in Trans. of *Hid. V. 2. p. 254.* Also the whole law respecting Rebels, or more properly, *Religious Insurgents*, (being restricted to *Mosulmans*, dissatisfied with their *Imám*, of the same persuasion) in the chapter entitled *Bogháí*, forming part of the Book of *Siyar*, in both the *Hidáyah* and *F. Áálumgeeree*.

4. OF a condemned criminal by order of the *Kázee*; or magistrate authorized to pass sentence of death.* In like manner, if the magistrate order the infliction of legal punishment not capital, and it happen to occasion death, no penalty is due according to the opinion of ABOO HUNEEFAH and his followers; "because the magistrate is authorized in what he does by the law; and an act sanctioned by the law is not restricted to the condition of preserving life." SHAFI'EE however maintains that the fine of blood, as for erroneous homicide, is due in this case to the heirs of the deceased; and that as the act of the magistrate was for the public advantage, it should be paid from the public treasury. †

In execution of
a legal sentence.

5. OF a murderer, liable to *Kifás*; if killed by the person legally entitled to retaliation, or by his express direction; although sentence of *Kifás* may not have been passed by the *Kázee*. This assumption of right, without a judicial inquiry, is however deemed culpable; and the exercise of it by any other weapon than a sword, or similar instrument, is declared subject to correction. The same principle of justification is extended by ABOO YOOSUF and IMÁM MOHUMMUD, to the case of a person entitled to *Kifás* for a limb; and causing death by striking it off; as "he has taken his right; and it is impossible to restrict dismemberment to the condition of preserving life." But ABOO HUNEEFAH holds the price of blood for erroneous homicide to be due, as the slayer's "right was to dismember, not to kill;" and the exaction of retaliation being permitted only, not enjoined, should, in cases short of life, be taken subject to the condition of preserving life. ‡

In enforcement
of a legal right
Kifás, although
a judicial sen-
tence have not
been passed.

IN

* See concluding section of the Book entitled *Adab öf Kázee* in the *Hidáyah*. p. 661, vol. 2, of the Translation.

† See the argument stated more at length, with a distinction between punishment, inflicted by the magistrate, in pursuance of the law; and private chastisement, as by a husband of his wife: in which the preservation of life is requisite. *Hid.* chap. *Tázee*, Trans. vol. 2, p. 81.

‡ See this argument in Trans. of *Hid.* vol. 4, p. 316. The right of enforcing *Kifás* for wilful homicide without a judicial sentence is recognized in the *Hidáyah*, and expressly declared in the *Mabeyn*, as quoted in the *F. A.* to the following effect. "If a person wilfully murdered

In self-defence, or in defence of another, if life be thought in danger, from an assault with a drawn sword or other mortal weapon.

6. In self-defence, or in defence of another, if life be endangered, or be thought in danger, from the assault of a person having a drawn sword, or other mortal weapon. If however self-defence be manifestly attainable without killing the aggressor, it is not lawful to slay him. And it is declared in the *Hidāyah*, that "if a person draw a sword upon another, and strike him, and then go away; and the person struck, or any other, afterwards wilfully kill the striker, such slayer is liable to retaliation." This is where the striker retires in such away as indicates that he will not strike again; for as, upon his retiring, he no longer continues an assailant, and the protection of his blood (which had been forfeited by the assault) reverts, retaliation is consequently incurred by killing him.* It is further

leave a single heir, such heir is entitled to put the murderer to death, with a sword or similar instrument, although the *Kāzar* may not have passed sentence of *Kāzar*. If the heir attempt to kill the murderer with any other weapon than a sword, or similar instrument, he should be restrained, or if he perpetrate the act, he is liable to discretionary punishment (*ʿUzr*); but he is not otherwise responsible; as he has taken only his legal right in whatever manner he may have put the murderer to death." It is added—that "if a person liable to *Kāzar*, for a murder committed by him, be wilfully put to death by a stranger who is not one of the heirs of the slain, such stranger is subject to retaliation of death; although the heir of the person murdered should declare that he had ordered the stranger to kill the murderer; unless he can adduce witnesses to the truth of such declaration.

* Translation of *Hidāyah*, V. 4, p. 293. See also the law of justifiable homicide in self defence explicitly stated in page 291: but as the translation is somewhat inaccurate, as well as imperfect, and the subject is important, the following more correct version is submitted.

"If any person draw a sword upon a Mosulmān, he (the Mosulmān) is at liberty to kill him in self-defence; because the prophet has said, "He who draws a sword upon a Mosulmān, renders his blood liable to be shed with impunity;" and also, because a person who thus draws a sword is equivalent to a rebel, on account of his hostility; and it is lawful to slay such, God having said in the *Koran*, "Slay those who are guilty of sedition, to the end that they may be restrained." Besides it is indispensably requisite that a man repel murder from himself; and as, in the present instance, there is no method of effecting this but by slaying the person, it is consequently lawful so to do. If, however, it be possible to effect self-defence without slaying the person, it is not lawful to slay him. It is written in the *Jāmā-i-Sagheer*, that if a person draw a weapon upon another, during either night or day, or lift a staff against another in the night in a city, or in the day-time in the highway out of the city, and the person so threatened kill him who thus draws the weapon, or lifts the staff, nothing is incurred; because, as striking with a weapon affords no room for delay or deliberation, it is, in this case, necessary to kill the person in order to repel him; and although, in the case of a small staff there be more room for deliberation, yet in the night-time assistance cannot be obtained; and hence the person threatened is in a manner forced, in repelling the other's attack, to kill him; and so likewise where the attack is made during the day-time in the highway, as there

assistance

further stated in the *Hidayah*, that if a lunatic, or an infant, draw a sword upon a person, and be slain in consequence, the fine of blood is due from the slayer according to the opinion of ABOO HUNEEFAH, and IMÁM MOHUMMUD; though not according to the opinion of SHAFIËE and ABOO YOUSUF.* It may be added from the *Zuheereeyah*, as quoted in the *Futáwa-i-Áálumgeeree*, that "IMÁM MOHUMMUD has declared it justifiable to kill " a person who attempts by violence to pluck out the teeth of " another; where there is no one present to afford relief. But " that it is not lawful to repel by homicide a forcible attempt " to file the teeth, although there be no one at hand to relieve."

7. IN preservation of property from theft or robbery. It is stated in the *Hidayah* that " if a person come in the night to a stranger and carry off his goods by theft; and the owner of the goods follow and slay him; nothing whatever is incurred; the Prophet having said " ye may kill in preservation of your property." It is to be observed however that this is only where the owner cannot recover his property but by killing the thief.† The same case is stated in the *Humádeeyah*, with this addition.

In preservation
of property
from theft or
robbery.

assistance cannot readily be obtained. When therefore a person thus slays another, the blood of the slain is of no account. Moreover the learned have declared a large staff which the body cannot resist, and which kills instantaneously, is the same, in effect, with a weapon, according to the opinion of the two disciples."

The following authority for justification of homicide, in defence of another threatened by a drawn sword, (or other mortal weapon) is quoted from the *Tubjeen* in the *F. Áálumgeeree*. " It a person draw a sword upon a Mosulmán, it is lawful to put him to death, and it is the same whether he be killed by the person upon whom the weapon is drawn, or by another in his defence; nor is there any difference in this case, whether it be day or night; and within or out of a city." It is added from the *Kafer*, that, " if a person lifts a staff to strike another by night in a city, or by day without a city, and the person so lifting a staff be killed, no responsibility attaches to the slayer. But if the person lifting a staff against another, by day and within a city, be wilfully killed, the slayer is liable to be put to death in retaliation, according to ABOO HUNEEFAH; though not according to his two disciples."

* Trans. of *Ibid.* Vol. IV. p. 292. The opinion of ABOO YOUSUF (that in the case stated, the lunatic and infant having, by their aggression, forfeited their right of legal protection) is omitted in the translation.

† Trans. of *Hid.* Vol. IV. p. 293. It is added, from the Persian version, " for if he knew " that upon his calling out the thief would relinquish the goods; and he notwithstanding " neglect

addition; "but if the thief throw down the property, the killing him is not lawful." And it is more fully quoted from the *Misheet* in the *Futāwā-i Ālumgeeree*, that if the thief, on being called to, run away, and throw down the property, it is not lawful to kill him." The three following cases are also cited in the *Humādeeyah*. 1. If the owner of a house see a thief breaking into it, he may kill the thief, or throw a stone, or shoot an arrow at him. It is not requisite to warn him first, according to ABOO HUNREFAH; though ABOO YOOSUF says, that warning should be first given to the thief, and if he do not then run away, he may be shot.* 2. But if a thief enter your house, and you apprehend he may be armed and will attack you, in this case you may shoot him; and it is not requisite to warn him.† 3. ABOO YOOSUF further says, that if an unarmed thief enter a house, and if the owner, though strong enough to seize him, apprehend that he would run away and escape with some of the effects; it is lawful, in such case, to strike and kill the thief. The last case is likewise stated *verbatim* in the *Māontuka*, and the second with the following variation. "A man enters the house of another,

"neglect calling out and slay him; retaliation is incurred; since he, in this case, slays the person unjustly." This is not in the Arabic original; and an argument is omitted that the owner of the house was justifiable in killing the thief from the beginning. The inference in the Persian version has however the authority of one of the commentaries on the *Hidāyah* (the *Afnee*, as quoted in the *F. A.*) and another (the *Kifāyah*) states responsibility (*Zamānat*) to be incurred; but without specifying *kifā*, or *diyat*.

*IMAM MOHAMMUD appears to have been of the same opinion with ABOO YOOSUF, by a similar case quoted in the *F. A.* from the *Nurwādir* of IBN-I SUMĀĀH: though the slayer of a thief, in the predicament specified, without warning him, is declared liable to the fine of blood only. In a further quotation of the same case from the *Zukbeerab*, supposing the thief to be killed by a stone, the fine of blood is stated to be payable by the *ākalab* (hereafter explained) and expiation only to be due from the slayer. But this has reference to the opinion of ABOO HUNREFAH, that homicide by a stone is manslaughter.

† A similar case is quoted from the *Mabes*, in the *Humādeeyah*, and was also cited from the *Bahr-i-rizā*, in a *Fatwa* delivered by the law officers of the *Nizamut Adālat* in 1799, relative to punishment upon presumptive evidence; viz. that if a man enter the house of another with a drawn sword, and the owner of the house apprehend an intention against his life, he is justified in putting the stranger to death, on the presumption that it is necessary for his own security. But this case may be considered more applicable to the preceding head, of justifiable homicide in self defence.

and attempts to take away his property. The owner may kill him, provided he is not able to seize him *. It is the same if the thief have taken property; and the owner, though strong enough to seize him; fear that the thief would shoot, or otherwise kill him." Another case is stated in the *Humādeyah*, and is likewise quoted in the *Futāwā-i Ālumgeeree*, to this effect. "A thief raises his head above a wall, on which the owner had placed some cloth, and he fears that on calling out the thief would steal the cloth and escape. In this case, the owner may shoot at and kill the thief; provided, according to the opinion of some lawyers, the value of the cloth be ten *dinms* † or more: but ABOO'L LYs, on the authority of the tradition from the prophet (above quoted) holds it lawful to shoot at the thief, unconditionally." The author of the *Mooltukul* states that "If a man, on a plain, attempt to take the property of another, it is lawful to kill the robber, provided the property be ten *dinms*, or more, in value;" and adds, "it is the same with respect to a man breaking into a house, if killed by the owner." In the *Möontuka*, cited by the author of the *Moheet*, and quoted in the *Futāwā-i Ālumgeeree*, the right of preserving property is further stated to justify a man's killing another, who may attempt to take away from him, by force, a piece of bread, or some drinking water, provided the owner of the bread, or water, shall be apprehensive of hunger or thirst to himself. And the author of the *Köonyah* declares that no penalty is incurred for killing a person who

* This case is also cited in the *Futāwā Ālumgeeree* from the *Moheet* of SUKUHSE: with an addition "that the thief may be killed, whether he shall have attacked the owner or not." And the same case is stated, in the *Tunabee-d*; with the authority of HUSUM, in his *Mejurrid*, that "it is lawful for the owner of a house to kill a man, who enters it with an intention of theft."

† This value is requisite for the penalty of *Hadd* in cases of robbery. Mr. HAMILTON calculates the *dirm*, or tenth part of a *denier*, to be from eight to nine pence; by which valuation ten *dinms* are about seven shillings. V. note in translation of *H.* vol. II, p. 85. The opinion of ABOO'L LYs is however adopted in the *Fatḥöl Kuds*, and other books of authority, which expressly declare that a man may kill in defence of his property, although it be less than the legal standard for *Hadd*; and another tradition from the prophet is cited—that "whoever is killed in defending his property obtains martyrdom."

attempts by violence to take a piece of cloth belonging to another. But these must be considered extreme cases; and to require, as in other instances, a real or presumed necessity, to render the homicide justifiable.

In prevention
of adultery,
rape, or other
heinous offen-
ces.

8. IN prevention of adultery, rape, or other offences, of a heinous nature, being chiefly such as, by the Mohummudan law, are punishable with death. The authors of the Persian Version of the *Hidāyah*, in their introduction to the chapter of *Tāzeer*, have quoted from the *Nihāyah* (one of the commentaries on the *Hidāyah*) the answer of ABOO JĀFUR, of *Hōondwān* (a ward of the city of *Bulkh*) to a question put to him, whether a person finding a man in the act of adultery with his wife, might slay him? The answer given in the Persian Version * is "If he know that the man will desist from the act of adultery, on calling out, or beating him with something not a mortal weapon, the man must not be slain. But if he believe that death alone will restrain the man from the commission of the adulterous act, it is lawful to kill him; and the woman also, if she be consenting to the adultery." It is added from the *Mōontuka*, † in proof that *Tāzeer*, or chastisement, in such cases, may be inflicted without an order from the magistrate, that it is founded on the principal of removing evil with the hand; which is authorized by an injunction from the prophet to this effect. "Whoever among you see evil, it is incumbent upon you to prevent it with your own hands; or if you are unable to do this, you must forbid it with your tongues." In the *Bukh-i-rāyik*, the interrogatory to, and answer of ABOO JĀFUR, are quoted from the *Tubīceen*, in more general terms, as applied indefinitely to any man and

* There are some inaccuracies in the English translation, vol. II, p. 77, particularly as to the object of prevention, which, by an erroneous interpretation of the words "*Bān khābūd mān*," is made to be "a repetition of the offence," instead of, desistance from the full commission of the actual offence.

† Misnamed the *Mōontakeer*, in translation of *Hidāyah*, Vol. II, p. 77.

woman seen in the act of whoredom; instead of being restricted to a man's finding his own wife in the act of adultery. It is added from the *Mooniyah*, that "a person seeing a man in the act of whoredom with his wife, or other female connection, and the latter assenting thereto, may kill them both." Upon which, and the preceding case (as cited from the *Tubiceen*,) the author of the *Buhr-i-rayik* observes, "a distinction is therefore made between a strange woman, and a wife or other connection. In the case of a stranger it is not lawful to kill without calling out, or beating with something not a mortal weapon. But if the woman be a connection, it is lawful to kill without this condition." It is further stated in the *Buhr-i-rayik*, from the *Moojtubá*, as a general principle, "that whoever sees a *Moslim* in the act of committing whoredom, may kill him; and need not refrain, except from fear that his plea, of the person slain having been in the act of whoredom, may not be admitted; and that he may consequently become liable to *Kifás*." But to reconcile this with the remark quoted upon the former case, the condition of previously calling out, or beating, must be understood, if the woman be not the wife or other connection of the slayer. It is also stated in the *Futawá* of KÁZEE KHÁN, that "if a person see a man of legal responsibility in the act of adultery with his wife, or with the wife of another, and, on calling out, the adulterer shall not run away, or desist, he may be killed and *Kifás* is not incurred." But this may be likewise reconciled with the distinction noticed in the *Buhr-i-rayik*, by considering the general rule to be stated by KÁZEE KHÁN, as well as by ABOO JAFUR, for cases of justifiable homicide, in prevention of whoredom, indiscriminately, and a further special rule to be given in the *Mooniyah*, whereby the condition of previously calling out, or beating, is dispensed with, when a person may find his own wife, or other near connection, in the act of adultery.

It is more probable however that the different cases cited have their origin in a difference of opinion between *ABOO HUNEEFAH* and his disciples.* At all events the rule which applies to a wife is declared in the *Humadeeyah* to be equally applicable to a female slave. It is further stated in the *Moon-tuka*, that " if a person, on entering his house, find a dissolute man with his wife, and be not able to seize the man, from fear of being overpowered, he is justified in slaying the libertine." The same case is given in the *Syruseeyah* with an extension of it to a female slave, as well a wife, and without the condition of inability to seize the man; though this may be implied. In the *Mooltukut* it is declared, that " if any one see a man about to commit a rape upon a free woman or a slave, the ravisher may be killed." And it is added, that " if a person find a man with his wife, or female slave, in the same situation, and the wife, or slave, be assenting to the whoredom, both parties may be slain." The same case is cited in the *Zukcerah*, with the following variation. " If a person see a man using force to commit a rape upon a free woman, or a slave; and fear that he will accomplish his purpose, if not put to death; the killing him is justifiable. If the woman be assenting, the same principle is applicable to her."† The justification of homicide

* In a treatise upon *Ta'weer*, written by *MOULAVEE SIRAJ-OL-HUK*, after quoting the answer of *ABOO JA'FAR*, in which a previous caution is required, he remarks, " this is taken from the doctrine of *IMAM MOHAMMUD*; who directs a previous consideration of the necessity of killing." *MOULAVEE MOHAMMUD RAHIB*, who has also written a dissertation upon *Ta'weer*, observes likewise that, on examining different books, he has found a variation in the authorities for justifiable homicide; " thus, according to *ABOO HUNEEFAH*, it is lawful to kill, without any previous warning, persons seen in the act of whoredom; or about to commit whoredom, either with a near connection, or a female slave; as well as thieves in the act of stealing property, or breaking into a house; whereas, according to *ABOO YOUSUF*, a previous warning to the thief is necessary in the latter case; and according to *IMAM MOHAMMUD*, in cases of whoredom, or intention to commit whoredom, it is a condition to justify the homicide, that there be no other means of prevention."

† The cases quoted from the *Moon-tuka*, *Syruseeyah*, *Mooltukut*, and *Zukcerah*, are cited by *MOULAVEE SIRAJ-OL-HUK*, in his treatise on *Ta'weer*, and he remarks upon them, that they shew, " a person attempting to commit a rape, may be killed though he have not actually committed it; and whether the woman be a wife, or other connection of the slayer, or not. Also

homicide by the party on whom a rape, or the crime against nature, is attempted, is expressly stated in the *Nukshbundeeyah* and the *Humádeeyah*, as follows. "A man uses force to commit a rape upon a woman, or sodomy upon a boy, (*umrud*, *lit.* a bearless youth,) who is unable to resist and prevent him, except by killing him. The homicide in this case is justifiable." The following extraordinary case is also stated in the *Humádeeyah*, as well as in the *Syrufceyah*. "A woman thrice divorced from her husband, but without witnesses to prove it before the *Kázee*, if unable to resist and prevent her late husband's cohabitation with her, may kill him at the time of his attempting to ravish her. *ABDOÖLLAH* reports from *ABOO HUNEFAH*, that if the woman be actuated by a desire to avoid sin, and by the fear of God, it is lawful for her to repel the outrage offered to her by killing her late husband. But some of the learned have said that although it is lawful, in this case, for the woman to kill her late husband, with a knife or other weapon; as her plea may not be credited, and *Kifás* may be demanded against her, she ought to kill him with poison; thus secretly occasioning his death, as he has secretly attempted an unlawful act against her *."

9. THE killing another at his express desire, or command. This was declared to be justifiable in a *Fatwa* delivered by the law officers of the *Nizámut Adálut* in the year 1798 †,

The killing a person at his desire, or command.

Also that a person seeing a man about to commit whoredom with his wife, or other near connection, when no force is used, may put both parties to death." This construction is admitted by the other law officers of the *Nizámut Adálut*.

* To understand the full extent of the illegality alluded to in this case, it must be remembered that a man, after pronouncing three divorces upon his wife, is restricted by the Mohamudan law from taking her again, until she have been married to another person; and that this restriction is founded upon an express prohibition in the *Kerán*, supposed to be of divine authority.—V. translation of *Hidáyah*, vol. I, p. 301.

† It was given on the 15th October 1798, in answer to a reference made by the court, for the purpose of ascertaining in what instances of wilful homicide a sentence of death is barred by the provisions of the Mohamudan law. The purport of the *Fatwa*, received in answer, is more fully stated in the preamble to Regulation VIII, 1799.

and

and it was added, in illustration, that the instruction to kill proves the right of retaliation to have been remitted. There are however three opinions upon the case. One, that the permission to kill does not legally sanction the homicide, and that it consequently subjects the slayer to *Kifās*. Another, that the permission of the deceased affords a doubt, or plea; which bars retaliation of death, but does not exempt the slayer from the fine of blood, to which he is liable for wilful homicide when *Kifās* is barred. The third, as first stated; and which appears to be the prevalent doctrine; that the deceased having power to dispose of his own life, as of other personal and proprietary rights, and having authorized the slayer to take it away, he cannot be made accountable for the act.* It may be further remarked, in this place, that suicide does not incur any forfeiture, or other penalty, under the temporal law of *Islām*, though it is held to be sinful, and punishable in a future state.†

Homicide by
compulsion, un-
der menaces
which induce a
fear of death.

10. HOMICIDE by compulsion, (*Ikrāh*) under menaces which induce a fear of death, is not strictly justifiable under the Mohummudan law; but the penalty of *Kifās*, according to the opinion of ABOO HUNEFAH, and MOHUMMUD, is transferred to the compeller; and the compelled person is considered rather as the instrument than author of the homicide; yet not altogether free from criminality, as the act is unlawful; and subject to discretionary punishment, if the circumstances of the case appear to require it. ABOO YOOSUF concurs in exempting the slayer, under compulsion, from retaliation of death; but extends the same exemption to the compeller, on the existence of a doubt, sufficient to bar

* The three opinions are cited in the *Majma-ul-Bihar* with an observation that the same are ascribed, by different reports, to the three *Imams*, (the ABOO HUNEFAN, and MOHUMMUD, and ABOO YOOSUF; and that ZAHIRI preferred the first, whereby, wilful homicide, under compulsion, is declared illegal and subject to *Kifās*.)

Kifās, from his not being the actual slayer. Whilst ZŌUFUR and SHĀFIʿEE contend that the compelled person is liable to the penalty of murder, as being the immediate cause of a criminal homicide, and SHĀFIʿEE further maintains that the compeller, as being the primary cause, is subject to the same penalty.* The principle of justification established by ABOO HUNEEFAH and IMĀM MOHUMMUD is applicable, a *fortiori*, to every case of physical compulsion, and necessity; in which the homicide may be altogether involuntary on the part of the person, who is forcibly made the instrument of committing it.† But no illegal act can be justified under the Mohummudan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, husband, or master; or of any other person whatever. Neither is the justification of homicide in support of the law, and of legal process, in all cases, expressly provided for; though it cannot be doubted that in cases of resistance to such process, any acts unavoidably done in the execution of public duty might be justified; and that the principles of justification which have been stated, in cases of a private nature, would be applicable, with additional force, in all matters connected with the execution or advancement of public justice.

BESIDES the specific instances of justifiable homicide, which have been noticed, the provisions of the Mohummudan law for discretionary punishment recognize the general legality of putting to death, as requisite for the prevention of evil,

Further general cases, in which homicide is declared to be justifiable if requisite for the prevention of evil, and safety of the community.

* See the different opinions more fully stated in Translation of *Hidāyah*, Vol. III, p. 406. The following case is cited in the *Shāfiʿiyah*, *Zuhrah*, and *Hindiyah*: "If the *Sāhib* compel a person to kill a Mosulman unjustly, by threatening death upon non-compliance, the *Sāhib* is liable to *Kifās* and the compelled person is free, according to ABOO HUNEEFAH and IMĀM MOHUMMUD."

† A part of the argument of ABOO HUNEEFAH and IMĀM MOHUMMUD, in which the compelled person is stated to be considered as an instrument, like a weapon, "or as if he had been thrown by the compeller on the deceased, and had thereby occasioned his death," is imperfectly translated by Mr. HAMILTON, Vol. III, p. 463.

and safety of the community, all violent disturbers of the peace; high-way robbers; extortioners under pretext of the public taxes; false informers and accusers before tyrants for purposes of oppression; and generally all habitual ill doers, who make a practice of committing offences injurious to society.* But though it is declared that "the killing such is meritorious; and that God will reward the slayers of them," it appears to be rather the province of the magistrate, than of individuals, to enforce the law, according to the ascertained degree of criminality, in such cases; except in defence of private rights, or to prevent an atrocious crime at the time of the attempt to commit it: for it is expressly declared, as a general rule and principle, that "every musulman may inflict *Tāzzer* upon a criminal, in the act of committing a crime; but after the completion of the offence the magistrate only is authorized to punish the offender.†

Province of the
magistrate to
enforce the law
in such cases.

The magistrate
only being au-
thorized to
punish the of-
fender after the
completion of
the offence.

Five descrip-
tions of illegal
homicide.

ILLEGAL and penal homicide, to which alone the Mohum-
mudan law refers in its definition of offences, under the
designation of *Jmāyāt*, is of five descriptions.

1. *Kutl-i-ūmd*; literally, wilful homicide; but implying a
murderous will, evinced by a voluntary act, and by the use
of a mortal instrument; or something likely to occasion death.

* *Nubr-i-feyh*, *Tamuriyeh*, and *Siraj-e-jah*, quoted in the *Musnad-i-Ahmed*. Other authorities are also quoted in the *Humaderjah*, with a tradition from the prophet, which is construed to justify the killing any general oppressor or evil doer whose depravity infects mankind, like a snake, scorpion, or other noxious animal. But the author of the *Nubr-i-feyh* intimates that in such cases, though every *Moslim*, seeing the offender in the act of committing the offence, is at liberty to put him to death, he may be deterred by the apprehension that his plea will not be received, and that he will consequently be liable to retaliation.

† *Nubr-i-feyh*, quoted in the *Musnad-i-Ahmed*. It is added in illustration from the *Kutub*, that "if a person see another commit an offence which incurs *Tāzzer*, and subsequently to the commission of it intend to have him punished, without authority from the magistrate, the person so punishing him is liable to punishment at the discretion of the magistrate."

2. *Shibah-i-umd*; or wilful-like, viz. resembling the former in the voluntariness of the act; but differing from it by the use of an instrument not considered to endanger life; and therefore not evincing a murderous intention.

3. *Kull-i-khutā*; or erroneous homicide; viz. by an erroneous act, or by error in the intention.

4. *Kull-i-kācem mokām-ikhutā*, also called *Jāree Mujrā-i khutā*, involuntary homicide, of the same nature as the preceding; but differing from the act being involuntary, instead of erroneous.

5. *Kull-ba subub*: or accidental homicide by an intervening cause.

Kull-i-umd, or murder, is defined in the *Hidāyah*, to be "homicide committed by a responsible person; * wilfully striking another person, with a mortal weapon, † or something that serves for such, as a sharp piece of wood, a sharp stone, or fire." It is added, in explanation, that "*umd* means intentional; but the intention, being concealed in the mind, can be discovered only by something affording proof of it; and at the use of a common instrument of homicide does afford such proof, when the slayer of a man uses an instrument of that description, it proves his intention to kill." Nearly the same definition is quoted in the *Futūwā-i Aādāt-e-Jereh* from the *Kāfee*, with the addition of "capacity to sever the limbs," in describing the substitute

Definition of
Kull-i-umd, or
murder.

* The original term, *Maklūf*, includes all persons accountable to the law for their actions; and refers particularly to the sane and adult, who alone are subject to the legal penalties of *Hadd* and *Kill*. See the Book of *Ḥudūd* or Limitation, in *Ḥukm* and *Ḥ. A.*

† *Shib*, lit. arrow. As here used it signifies to mean any instrument of death; though its more strict interpretation is applied to edged weapons, or such as are capable of destroying life by dismemberment.

for a weapon ; but without the explanatory remark given by the author of the *Hidayah*.

Shibah-i-umd,
or manslaughter.
cr.

With respect to *Shibah-i-umd*, which, though not with technical exactness, may, to distinguish it from the crime of murder, be denominated manslaughter, there is a difference of opinion between ABOO HUNEEFAH and his two disciples. The former defines it to be " homicide from a responsible person striking wilfully with something which is not a mortal weapon, nor a substitute for such." ABOO YOUSUF and IMAM MOHUMMUD (as well as SHAFI'EE) maintain that if the stroke be given with a large stone, or a large piece of wood, it is *Kutl-i-umd*; and they define *Shibah-i-umd* to be " homicide from striking wilfully with an instrument which is not likely to kill; such as a small stick;" adding, as the ground of their opinion, that " in this case evidence of the intention to kill is wanting; the instrument used not being an instrument of death, it may be presumed that the design was not death, but correction or something else, which reduces the offence to manslaughter. But evidence of an intention to kill is not wanting when an instrument, which must occasion death, is used. In such cases therefore it is murder." In answer to this reasoning, ABOO HUNEEFAH argues " that the instruments specified (*viz.* a large stone, or large piece of wood) are not appropriated, nor commonly used, for the purpose of killing. Proof of an intent to kill therefore is wanting, when such instruments are used, and homicide committed with them is manslaughter, only as with a whip or small stick; which the prophet has declared to be *Shibah-i-umd* only, and punishable by a fine of one hundred camels."

* See the *Hudud* referred to by ABOO HUNEEFAH, with the whole of what is quoted on the different opinions respecting *Shibah-i-umd*, in the *Hidayah*. The same in substance, is quoted from the *Muwazzah*, in the *F. Mawazir*, with a remark that the doctrine of ABOO HUNEEFAH is the most correct. Without determining this point, it may be observed, that all the opinions appear to agree in considering an intention to kill the essential ground of distinction between *Kutl-i-umd* and *Shibah-i-umd*. The difference between them respects the instruments to be admitted as sufficient evidence of the intent to kill.

THE error which distinguishes *Kull-i-khutā*, or erroneous homicide, is either in the act, or in the intention. In the former, as when an arrow is shot at a mark, and hits a man. In the latter, as when a man is mistaken for an animal of game, and shot at as such; or when a Mosulman is shot, under a supposition of his being a hostile infidel, whom it is lawful to kill. These examples are stated in the *Hidayah*; and the latter is more fully illustrated by a quotation in the *Furāwā-i-Malumgeeree*, from a commentary on the *Jamā-i-Sugheer*, to the following effect:—"If a Mosulman army engage an army of infidels; and they mix together; and a Mosulman kill another Mosulman, supposing him to be an infidel; the slayer is not liable to retaliation; nor is the fine of blood due, if the Mosulman killed were assisting the infidels." It is added, from the *Muontukā* as reported by IMĀM MOHUMMUD, that although a stroke aimed at one member, and falling on another member of the same person, be not sufficient, if death ensue, to take the case out of the predicament of wilful homicide; yet it would be *Kull-i-khutā* only, if the blow were aimed at one person and undesignedly struck another. The author of the *Hidayah* also states the penalty of murder to be incurred, if the blow aimed at one part of the body strike another part and occasion death; as all the parts of the same body compose one person. But if an arrow, shot at one person, pass through him and hit another, and they both die; it is stated to be murder with respect to the person aimed at, and first struck, only; it being erroneous homicide, with respect to the second person, in the same manner as when an arrow is shot at a deer and inadvertently hits a man *.

Kull-i-khutā, or
erroneous ho-
micide.

* See trans. of *Hid.* V, p. 307. In a *Furawī* delivered by the law officers of the *Nizāmat Adālat*, in the year 1801, not only the shooting at one man and undesignedly killing another, but even killing the person intended, if any accident intervene, such as the arrow, or other instrument, passing by the person aimed at, and killing him on a rebound, was declared to be *Kull-i-khutā*. V. Preamble to Reg. VIII, 1801.

Kutl-i-káeen
Mekám-i-khuta,
or involuntary
homicide by an
involuntary act.

THE example given in the *Hidáyah*, of *Kutl-i-káeen mohám-i-khuta*, or involuntary homicide by an involuntary act, is a sleeping person's falling on another and killing him by the fall. The same instance, with the variation of rolling, instead of falling, is quoted in the *Futáwá-i Áálumgeeree* from the *Kafce*. And three further examples are cited in the same work from the *Moheet*.

1. A PERSON'S falling from the roof of a house and killing another thereby.
2. DEATH occasioned by the accidental fall of a brick, or piece of wood, from the head of a person.
3. A HORSE trampling a person to death, without the rider's designing it, or being able to prevent it.

Kutl ba subub,
or accidental
homicide by
an intervenient
cause.

ACCIDENTAL homicide by an intervenient cause (*Kutl-ba-subub*) is stated in the *Hidáyah* to occur when a person digs a well, or sets up a stone, in ground not belonging to him; and another is killed by falling into the well, or over the stone. In the *Móozmurát*, as quoted in the *Futáwá-i Áálumgeeree*, the accidental trampling of a man to death, by a led or driven quadruped, is also mentioned as an example of this description of homicide, and many other instances are given in both works, under the head of *structures upon the highway*; which, if they occasion homicide, incur the same responsibility, as if constructed on private property without the owner's permission.

Series of cases
ruled to be
murder, manslaughter, or
other homicide.

THE foregoing will be sufficient to explain the third, fourth, and fifth, species of homicide, when there may be no particular circumstances to occasion a minute distinction between them, and either murder, or manslaughter. But it will be useful to notice a series of cases which appear, from the *Hidáyah*, or *Futáwá-i Áálumgeeree*, to have been ruled wilful homicide, incurring retaliation of death; or not wilful, and

therefore subject only to the penalties of manslaughter, or other involuntary homicide *.

1. If the homicide be perpetrated with a sword, or any other edged weapon; such as is commonly used to take away life; or with any sharp instrument, calculated to produce the same effect, as a sharp piece of wood, a sharp stone, and the bark of cane; or with fire, which is equally capable of separating the members of the body and occasioning death; it is universally agreed to be wilful, as already quoted from the *Hidayah* and *Fatawi-i-Aalumgeer*.

2. It is further stated, as a general principle, in the *Hidayah*, that if a person wound another, so as to disable him, and render him constantly bedridden until death; responsibility for the homicide is incurred by the person who inflicted the wound, to which the death is referred.

3. If a person be killed by a stroke given with the iron edge of an hoe (*Kulund*) the homicide is generally agreed to be murder (*Kull-i-umd*). It is also agreed to be manslaughter (*Shibah i-umd*), if the wooden handle only were used. But if the blow were struck with the iron back of the instrument, according to ABOO HUNEEFAH, it is manslaughter; whereas in the opinion of ABOO YOUSUF and IMAM MOHUMMUD, it is equally wilful homicide, whether occasioned by the iron back of an hoe, or by the edge of it†

4. If

* These will be subsequently stated. But to render some of the examples more intelligible, it may be proper to note, in this place, that a compensation for bloodshed (denominated *Akl* as well as *Diyah*) payable by the *Akhlab*, or persons responsible, with the slayer, for the payment of this fine, is one of the legal penalties for every description of unlawful homicide except murder. It may also become payable, in commutation for *Kifai*, in cases of wilful homicide, but it is then exclusively due from the offender himself; as it likewise is in every case of composition for murder.

† The author of the *Hidayah* remarks that there is one report of ABOO HUNEEFAH's having concurred in the opinion of his two disciples: But that another, and more authentic report, states his opinion to have been against the penalty of wilful homicide, unless a wound were inflicted.

4. If death be effected by pricking with a packing needle (*misfullah*) it is wilful homicide; but not according to the best authorities, if a small needle, or any similar instrument, be used, and it happen to kill the person pricked with it. Some are of opinion however that the slayer is liable to the penalty of murder, if the instrument, though small, be applied to a part where it is likely to take away life.*

5. If a person kill another by biting him, it is recorded in the *Ajnas*, that retaliation for wilful homicide is not incurred; as *Kifās* attaches only to acts done with an instrument which might be used for cutting the throat in consecration of animals (*Zubh*), which the teeth are not.†

6. If a person be killed by successive blows with a whip, or stick, retaliation for murder is not due, according to the opinion of ABOO HUNEEFAH.‡

7. It is recorded by IMAM MOHUMMUD, in the *Jam' i-Sugher*, that *Kifās*, for wilful homicide, is incurred by throwing a person into a heated oven, and thereby occasioning his death, whether, fire be in the oven at the time, or not; and although the person may not die immediately, if he

Mr. HAMILTON, has translated *Kalan*, in the case cited, *spade* or *brovel*; and the principle seems equally applicable to these instruments; but the recital corresponds more exactly with a *loa*, which is also of more common use in India, and is understood to be the instrument referred to. It is added in the *Hidāyah* (but omitted in the translation) that the same difference of opinion is reported to have been entertained by ABOO HUNEEFAH, with respect to homicide occasioned either by the wooden scale, or by the iron part, of a balance.

* *Kbuzāunt* in *Moshtaq*, quoted in *F. A.*

† *Kb'djmi-ül Futūvā* quoted in *F. A.* The reason assigned however appears applicable only to the doctrine of ABOO HUNEEFAH; and not even to this, in every case; as homicide by fire is admitted by him to be wilful. ABOO YOUSUF and IMAM MOHUMMUD consider it wilful, if the instrument be likely to kill, whether sharp or not.

‡ *Kbaldjmi-ül Futūvā* and comment on the *Mubfoo* quoted in *F. A.* KAZER NŪJŪ RŪ DĀN, in his translation of this part of the *Futūvā-i-Ādalumgeeres*, remarks, that according to the opinion of ABOO YOUSUF, IMAM MOHUMMUD, and SHAFI'IES, homicide by successive blows of a whip, or stick, incurs *kifās*.

continue

continue bed-ridden, and unable to walk till his demise*.

8. If a person, bound hand and foot, be put into a caldron, or other vessel of boiling water, sufficiently hot to produce blisters on the body; and die in consequence, either immediately or within a few days; retaliation of murder is due; but not if the person be able to walk about before his death†.

9. If a person be thrown into cold water, in the winter season, so that his limbs be contracted, and he die in consequence; or if he be stripped naked and exposed to the winter cold upon the roof of a house, so as to occasion his death; or if he be bound hand and foot and kept in snow till he expire; the fine of blood is due for manslaughter‡.

10. In like manner the fine of blood for manslaughter is incurred, if an adult person, or child, be bound hand and foot, and exposed to the sun, without means of escape, till death ensue§.

11. If a person immerse an infant or an adult, into water from which there is no prospect of his escape by swimming; as for instance, into the sea; he is not liable to retaliation for wilful homicide, according to ABOO HUNEEFAH; (as no wounding instrument is used;) but the two disciples and SHÁFIËE maintain that he is. All agree however that it is manslaughter only, if there be not water enough to endanger life

* *Mohet* and *Káree Khán*, quoted in *F. A.*

† *Zubeereryah*, quoted in *F. A.*

‡ *Zubeereryah*, quoted in *F. A.* It is not specified whether ABOO YOUSUF and IMÁM MOHAMMUD consider these instances to be murder or manslaughter. But from analogy to other cases, in which they differ from ABOO HUNEEFAH, it may be inferred that they do not concur in the opinion stated.

§ *Khuzánu't tól Moosfiyen*, quoted in *F. A.* The same remark is applicable in this, as in the last instance, on the probable difference of opinion between ABOO HUNEEFAH and his disciples.

without swimming; or if the person thrown into the water be capable of swimming, and his arms and legs be not bound, nor a weight tied to the body, and the place be such that he may escape by swimming*.

12. THE same difference of opinion exists between ABOO HUNEEFAH and his disciples, if the person were drowned from being repeatedly immersed in water, till he died†.

13. If a person skilled in swimming be thrown from a boat into a river, or other confined piece of water, and sink at once without swimming, ABOO HUNEEFAH considers the fine of blood for manslaughter to be due; but has declared neither retaliation of death, or the fine of blood, to be incurred, if the person so thrown remain above water and swim to shore, he is drowned, although he should have swam to save himself till he became exhausted. Nor is any thing due for throwing a person into water, if it be uncertain whether he is drowned or not, until it be ascertained that he is dead. It is the same if the person sink two or three times, and appear above water again, if he be alive when last seen; and his condition afterwards be doubtful‡.

14. If a person be thrown from the roof of a house, or from the top of a hill, or into a well, and be killed thereby; according to ABOO HUNEEFAH, it is manslaughter; and his two disciples concur with him if there be probable means of escape; but if

* *Ibid.* and commentary on the *Za'edat*, quoted from the *Mohet* in *F. A.* See the arguments of ABOO HUNEEFAH and his two disciples, in support of their respective opinions. *Trans. of Hid.* Vol. IV, p. 289. One reason ascribed to the former, viz: "that homicide by drowning being of rare occurrence, the deterring from it (by capital punishment) is of less consequence than with respect to prevalent offences," is omitted in the translation. It is scarcely necessary to add that the whole of ABOO HUNEEFAH's reasoning in these and several other cases, appears unsatisfactory and futile.

† *Zabereyah*, quoted in *F. A.*

‡ *Zabereyah* quoted in *F. A.* The separate opinions of ABOO HUNEEFAH and his disciples are not stated; but the principles upon which they differ in the preceding cases, are equally applicable to this.

there be no probability of saving life in such cases, they deem it wilful homicide*.

15. A person strangling another is not liable to suffer death, according to the doctrine of ABOO HUNEEFAH, (though he is in the opinion of the two disciples) unless he be notorious for having repeatedly committed this offence; in which case, if he have not shown signs of repentance before he is apprehended, he should be punished with death as an example†.

16. If a person give poison to another and death ensue, there are three cases. 1. When the giver forcibly, and with his own hand, puts the poison into the mouth of the deceased. 2. When he may have put the poison into the hand of the deceased, and compelled him to drink it. 3. When he may have given the poison into the hand of the deceased, and used no compulsion to make him drink it. Retaliation of murder is not incurred in any of these cases. In the first and second, the fine of blood is due from the *Ákilah*. In the third no penalty is incurred, whether the person, who drank the poison without compulsion, was aware of its being poison or not‡.

17. If

* *M.B.* et, quoted in *F. Á.*

† On the principle of *Sedfat*, or discretionary punishment for the purpose of deterrent. The estimation is taken from the *Kasí* as quoted in the *F. Á.* It is confirmed by a case which treats of the back of *huceny* in the *Hudud*; but from the ambiguous meaning of the word *Áhufah* in the Persian Version, has been erroneously translated by Mr. HAMILTON, as a case of homicide on provocation. The Arabic original has the explicit term *Hunnah*; and the literal sense of the passage is—"If a person kill another by strangling, the fine of blood is due from the *Ákilah* of the slayer according to ABOO HUNEEFAH. If however a man repeatedly commit this offence, he must be put to death as an evil doer, and his liability be removed by destroying *Ákilah*."

‡ *M.B.* et, quoted in *F. Á.* The *Furwá* of KÁZEE KHÁN contains two cases to the same effect.—First, if the deceased have taken the poison into his own hand, and eat it, or drink it, without knowing it to be poison: in which case neither retaliation or the fine of blood is incurred: but the prisoner should be imprisoned and chastised. Secondly, if the poison be forcibly put into the mouth of the deceased by another person, in which case the fine of blood is due from the *Ákilah* of the poisoner." Several other authorities are cited by MOULAVY SIRÁJ DOL HUR, in his treatise upon *Tázi* or *Sedfat*. The author of the *Máá* observes that ABOO YOUSUF and IMÁM NISÁ

17. If a person bind another, and keep him confined in a house until he die from hunger; IMÁM MOHUMMUD declares him liable to corporal punishment; and the fine of blood to be payable by his *Áakilah*; but decisions are passed according to the opinion of ABOO HUNEIFAH, that neither *kifás* or *diyut* is incurred #.

18. If a person be put alive into a grave, and kept there until he dies, according to IMÁM MOHUMMUD the murderer is liable to suffer death in retribution; but on the opinion of ABOO HUNEIFAH judgment is given for the price of blood only, payable by the *Áakilah* †.

19. If a person bring another into his house, and put a wild beast into the room with him; and shut the door upon them; and the beast kill the man; neither *kifás* or *diyut* is incurred. And it is the same if a snake, or scorpion, be put into the house

IMÁM MOHUMMUD, concur with ABOO HUNEIFAH, in not considering homicide by poison to be *Kull* homicide, and that the reason why they do not infer a design to kill, as in other cases wherein they differ from the latter, is that poisonous drugs are sometimes given, in small quantities, medicinally; and although the giving a large quantity of poison might evince an intention to kill, it is possible the person who gave it, may not have been aware that the quantity was excessive; wherefore evidence of wilful homicide is wanting, and the case is ruled to be *Shibab-i ámd* only. It is added in the *Mabec* however, that the IMÁM may inflict punishment (*Saásut*) of death upon a person who makes a practise of giving poison. *Tabáree* also, in his *Futáuá*, declares, that if a person mix poison with food, and give it to another who eats it, without knowing it to be poisonous, and dies, the giver of the poison ought to suffer death, as *Saásut*. And the author of the *Tanakee* states, that some lawyers are of opinion, the giver of poison incurs *kifás*, if it occasion death, as it operates like fire in separating and destroying the members. *SIRÁJ-ÖDL HUK* concludes, upon the whole of the authorities quoted by him, that according to the uniform opinion of ABOO HUNEIFAH and his disciples, the killing by poison, in whatever manner it be given, is not deemed wilful homicide; that the fine of blood is payable, as for manslaughter, if the poison be compulsively put by another into the mouth of the deceased; but that if the deceased took the poison, into his own hand, and eat or drank it without compulsion, though he did not know it to be poison, the giver is liable to discretionary punishment only. He adds that in the present times the opinion of *Tabáree*, for exemplary punishment, should prevail: as the mixing poison with food is a heinous offence; such as is declared punishable with death for the security of mankind.

* *Zubereenyah*, quoted in F. A. KAZEE NUJUM-ÖÖ'DEEN remarks on this case, that it is incumbent on the magistrate to inflict exemplary punishment.

† *Zubereenyah* quoted in F. A. KAZEE NUJUM-ÖÖ'DEEN adds, in explanation, because the homicide is not committed by a wounding instrument.

with

with a man: or if they were there before, and sling him to death. But if the sufferer be a child the price of blood is payable*.

20. It is recorded in the *Möbntuk*, from *ABOO YOOSUF*, that in the case of a person's throwing another, bound hand and foot, to be devoured by wild beasts, *ABOO HUNEEFAH* said, the offender was not liable to *kifás* or *diyut*; but should be corporally chastised and imprisoned 'till he repent; and *ABOO YOOSUF* added his own opinion, that the imprisonment in such a case should be for life†.

IN the whole of the examples above cited, it must be assumed that the wound, blow, or other cause of death, proceeds from a sane, and adult person; that the homicide is unlawful; and that the blood of the person slain was under legal protection, from his or her being the subject of a Mosulman state; and resident within its dominions‡. With respect to the stated judgment of retaliation for homicide, it must further be supposed that no legal defect or doubt (*Shöb'hah*) intervenes to bar the sentence of *Kifás*, and that it is demanded by the heirs of the slain; as will be more fully noticed, after specifying the legal penalties for the several descriptions of unlawful homicide.

Circumstances
to be assumed
in the examples
cited.

*

* *Kruzáunt ööl Mööfii ren* quoted in *F. A.*

The *Kuzee ööl Köözát* observes, on this case, that neither retaliation or the fine of blood is incurred when a man is killed, because the man might repel the beast, if he had courage to defend himself. But a child having no power to resist, his death is ascribed to the original author of it, and incurs the legal penalty.

† *Mabeet* quoted in *F. A.*

‡ *Hid. B. Jináyát. Ch. II.* On 'what occasions retaliation of homicide. *B. Hujr*, or Inhibition, respecting infants and lunatics. And *B. Siyar, C. VI.* concerning *Möfáimins*, or protected foreigners. The British dominions in India, though really independent of any Mohammudan Government, are considered to form part of a Mosulman empire, from the nominal acknowledgment of the King of *Dehly*, in whose name the coin is still current. On this account, as well as from the sanctioned administration of Mosulman law, and the appointment of *Kázees* for the performance of part of the duties prescribed by it, the territory held by the East India Company is admitted to be *Dár ööl Islám*, the seat of peace; in opposition to a country not subject to Mohammudan rule, which is called *Dár-ül-burb*, the seat of hostility. See commentary on the *Shájjir, jah* by *SIR W. JONES*, and *SALT's Prel. Disc.*

Penalties for
the several de-
scriptions of un-
lawful homi-
cide. And first
of *Kutl-i-úmd*.

THE penalty for *Kutl-i-úmd*, or murder, is *Kifás* (retalia-
tion), unless the heirs or representatives of the slain forgive
or compound the offence. The murderer is also excluded
from inheritance to the property of the slain. The right to
demand retaliation for wilful homicide is founded on a text
of the *Korán*, as well as upon a tradition from the prophet.
The right of pardon and composition are also derived from
the same authorities. And a tradition is cited for excluding
the slayer from inheritance to the estate of the slain in all
cases of unlawful homicide, except that arising from an in-
tervenient cause, which is excepted from the general rule of
exclusion as not attaching to any person the immediate act
of bloodshed. Whether this distinction be well founded, or
not, the object of the general principle of forfeiture of he-
ritage, in cases of illegal homicide, is obvious.* The re-
taliation allowed for murder is stated to have two ends in
view. First, satisfaction to the heirs of the slain; either by
retaliating blood for blood on the person of the offender;
or by receiving a pecuniary compensation for the injury
done by him: Secondly, the determent of others, by exempla-
ry punishment, from committing the same crime. The latter,
however, though the true, and only justifiable, motive for
capital punishment, by human laws, is a secondary object of
the Mosulman law of *Kifás*; which considers the private in-
jury in cases of homicide, unaccompanied with highway
robbery, or other violent breach of the peace, to be of
greater magnitude than the public detriment; and conse-
quently leaves the demand of retaliation, with liberty of
forgiveness,

* SIR W. JONES in his remarks upon homicide, as one of the impediments to succession, under the Mosulman law of inheritance, observes that, "If a man were to dig a pit, or fix a large stone, on the field of another, and the owner of the field were to be killed by falling at night into the pit, or running against the stone, the doer of the illegal act, which was the primary occasion (but not the cause) of the death, must pay the price of blood; but would not, it seems, be generally disabled from inheriting; he ought, one would think, to be incapable of succeeding to the property of the deceased, whom he destroyed, and whom he might have meant to destroy by such a machination." *Commentary on Siráfiy, jah*, p. 62. But without evidence of the intention

forgiveness, or composition, to the feelings and discretion of the legal representatives of the person murdered.* SHAFI'EE maintains that *Kuffarah*, (expiation by emancipating a Mosulman slave, or fasting for two months) is also requisite, in cases of murder, on account of the sin attending so heinous an offence; and *a fortiori* as it is enjoined by the law for the less criminal species of homicide. This argument however is not admitted by ABOO HUNEFAH and his disciples, who contend for an adherence to the text of the *Korán*; and considering the sin of murder too great for expiation, deny the inference of its necessity or propriety, on conviction of this crime, from its being imposed by the law in atonement for offences of less magnitude.†

EXPIATION, and exclusion from inheritance, are the prescribed penalties for *Shibah-i-úmd*, or manslaughter; and for the two species of homicide by misadventure, denominated

Penalties for
Shibah-i-úmd,
Kutl-i-khud and
*Ka'cem moham-i-
khutá*.

intention to destroy, or of very culpable neglect, the forfeiture of inheritance does not appear, in any case, to be strictly equitable. In the preceding page of the commentary, homicide, under the Mohummudan law, is defined to be "either *with malice prepense*, and punishable with death; "or *without proof of malice*, and expiable by redeeming a Mosulman slave, or by fasting two "entire months, and by paying the price of blood; or thirdly, it is *accidental*, for which an expiation is necessary." In this definition the term *malice* must not be understood in the sense it bears, under the English law, to distinguish murder from manslaughter; viz. "not so properly "spite or malevolence to the deceased in particular, as any evil design in general; the dictate "of a wicked, depraved, and malignant heart." (BLACKSTONE, Vol. IV. p. 198. And FOSTER p. 256.) SIR W. JONES further remarks that "malicious homicide, or murder (for, by the "best opinions, the Arabian law on this head, nearly resembles our own) is committed when a "human creature is unjustly killed with a weapon, or any dangerous instrument likely to occasion "death." But though in this respect the better construction of the Mohummudan law of *Kutl-i-úmd* may correspond, in substance, with the English law of murder; the former differs essentially from the latter in regarding chiefly the proof of an intention to kill, whether deliberate or sudden; without any allowance for unpremeditated, though unlawful, homicide, committed in the heat of passion, upon strong provocation; which (to borrow the words of FOSTER) "the "benignity of our law imputeth to human infirmity;" and which therefore is admitted to extenuate the offence, from the crime of murder, to that of manslaughter. A passage in Mr. HAMILTON's translation of the *Hidáyah*, at the conclusion of the Book on *larceny*, which appears to contradict this remark, has been already explained to be a mistake of the Translator.

* Vide Book of *Yináyát* in *Hid.* and *F. A.*

Also SALE's Trans. of the *Korán*, C. 2 and 17, and his Prel. Dis. p. 139.

† See Trans. of *Hid.* Vol. IV. p. 273.

Fine of blood
for manslaughter

Kull-i-khutā, and *Kācem mokām-i-khutā*; besides *Diyut*, or the fine of blood, payable by the *Ākilah* of the offender. * The heavy fine (*Diyut-i Moghulluzah*) for manslaughter is one hundred female camels of four classes, viz. twenty five of one year, and the same number of two, three, and four years of age, respectively. If adjudged to be paid in money it is ten thousand *dirms*, or one thousand *deenars*.† The fine for homicide by misadventure is also one hundred camels, but of the following descriptions, twenty males and twenty females of two years; and the same number of three and four years respectively. The fine in money is the same as for manslaughter. These fines, however, are for the death of a man. Those for a woman are limited to half the amount. But there is no difference between the fine for a Mosulman and for a

And for homicide by misadventure.

* The *Ākilah* are, literally, those responsible for the *Ahl*, or *Ma,ākulah*, of the same import with *Diyut*; and meaning the fine or compensation for bloodshed. The *Ākilah* of a soldier, or other person enrolled in the public service, are those registered with him as his associates. If the party be not so enrolled, his family and tribe are considered his *Ākilah* as being his co-adjutors. Persons resident in the same place are also responsible for each other, if there be not a sufficient number of the two former descriptions of *Ākilah* to make good the fine, under the prescribed limitation of four *dirms* (less than one rupee) each, including an equal contribution from the offender himself. Women and Children are exempted from responsibility as *Ākilah*, from their not being able to assist or restrain; and the reason stated in the *Hidāyah* for involving others in the fine is, that the offender (who not being convicted of wilful homicide, would be too severely punished if personally made answerable for the whole fine) is supposed to have committed his offence by the aid, or through the neglect, of his associates; as altho' they may not have supported him, they might, if vigilant, have restrained him. See further provisions respecting the levying of fines for blood, and responsibility of the *Ākilah*, in the *Hidāyah*, B. *Mālik*, Trans. Vol. IV, p. 448. It does not appear however that these provisions have ever been judicially enforced, against the kindred or connections of offenders, in *Hindistan* or *Bengal*; though *Furwās* have been given, and sentences passed, for the payment of fines by the *Ākilah*, in pursuance of the letter of the law; the spirit of which, on this point, is contended by some to have exclusive application to *Arabia*: where the inhabitants were divided into tribes and closely united by the obligation of mutual support.

† There is some doubt upon the exact weight and value of the legal *dirm* and *denār*. But on a general calculation of 14 *Kerāts*, each weighing 5 barley-corns, being 1 *dirm*; and 5 *dirms* being equal to a rupee of the same weight; the stated fine for homicide would be exactly 2000 rupees. Mr. HAMILTON's valuation of the *dirm* and *denār*, referred to in a former note, would make it 350 £. The award of *Diyut*, in cases of involuntary homicide, is founded on a text of the *Korān*. V. SALE'S Trans. Ch. 4, p. 72 and notes. But the amount is not fixed in the written law; and the regulation of it at one hundred Camels, by the oral law, is said to be derived from MOHAMMUD's grandfather, *Ād OBL MOBRULIS*, having redeemed *Āsūd-LAH*, the prophet's father, from sacrifice, by an offering of one hundred Camels. See note in SALE'S Trans. p. 369.

Zimree, or infidel subject.* In *Kull-ba subub*, or accidental homicide by an intervenient cause, expiation is not incumbent; nor is exclusion from inheritance incurred; according to the doctrine of ABOO HUNEEFAH and his disciples; (though SHAFI'EE maintains an opposite opinion); as those penalties are restricted to the direct offence of bloodshed, which, in this case, is not considered to have been committed. The fine of blood is however payable by the *Akilah* of the wrong doer, as a compensation for the injury, done by him; and on account of his transgression in unlawfully digging a well, or placing a stone, or other means of homicide, upon land not his own property.†

* What is stated respecting fines, is according to the opinion of ABOO HUNEEFAH and ABOO YOUSUF. IMAM MOHAMMUD held a different opinion concerning the definition of *carab*, to compose the fine for manslaughter: and a further difference of sentiment is quoted in the *Indigab* from SHAFI'EE, both respecting the fine of camels for homicide by misadventure; and regarding the money fine, in *dirms*, as consisting of twelve, instead of ten thousand. V. *Hid.* Ch. *Diyat*, Trans. Vol. IV, p. 330.

† SHAFI'EE contends that the person who occasions the death of another by an intermediate cause is equally a shedder of blood, as in cases of homicide by misadventure; and should therefore be liable to the same penalties. See Trans. of *Hid.* Vol. IV, p. 277. In the passage quoted in a former note from SIR W. JONES's commentary on the *Sirajy-yah*, the doer of the illegal act, which occasions this species of accidental homicide, is inadvertently mentioned as personally bound to pay the price of blood; and it is not specified by whom the fine of blood is payable in other descriptions of involuntary homicide. The *Diyat* is however expressly stated in the *Indigab* and *F. Akumgeeree* to be payable by the *Akilah*, where there are any, for every kind of unlawful homicide established by proof (viz. independently of the slayer's acknowledgment which is obligatory upon himself only) except murder; the legal penalty for which is *Kiyas*; and if this be commuted to, or compounded for, the price of blood, it is demandable from the murderer alone, or his property. When there are no known *Akilah*, or an insufficient number for the payment of the fine of blood, according to the prescribed rate of four *dirms* each, the slayer is likewise responsible for the *diyat* in cases of involuntary homicide, if he be a *Zimree*; and also according to one report of ABOO HUNEEFAH's opinion, if he be a Mosulman. But the prevalent doctrine is, that, in a Mohammudan community, when the involuntary slayer is a Mosulman, and the fine of blood due to the heirs cannot be recovered from his *Akilah*, it is payable from the *Bys ol mal*, or public treasury; on the principle that all the members of such a community are associates, and co-adjutors to each other; as well as because the property of a person dying without heirs devolves to the treasury of the state. See Trans. of *Hid.* Vol. IV, p. 457 and 463. The author of the *Kisfayab* supports the opinion last noticed on the authority of the *Zahir oo' us-suyat*; but the law officers of the *Nizamut Adalat* do not consider it applicable to the British possessions in India; and in a recent *Fatawa*, (recorded 9th July 1807,) have declared a Mosulman, who was convicted of two homicides by misadventure, liable to the *diyat* for each, "payable by himself, if he have no *Akilah*." He is further declared subject to discretionary punishment (*Saadat*) on consideration of the circumstances of the case; and of his inability, from want of assets, to make good the fine of blood.

Confessions, in charges of homicide, and other criminal accusations, how far admitted for conviction.

Rule that the whole of what is stated in explanation be taken as part of the confession.

IN charges of homicide, as well as in other criminal accusations, before a Mohummudan court of judicature, the greatest weight is given to the confession of the party accused, whether made before the court, or elsewhere, provided it be voluntary, and by a person of sane mind and mature age.* But to found a conviction of murder, it is necessary that the confession expressly declare the blow, wound, or other cause of homicide, to have been wilful † It is also a rule that the whole of what is stated in explanation be taken as part of the confession. ‡ In the *Zeeâdât* of IMÂM MOHUMMUD it is stated to be a general principle; that "whoever confesses an act which subjects him to a legal penalty, and subsequently offers a plea, to exonerate himself from the penalty, must establish such plea by proof. But if he denies that which occasions the penalty, his denial is admitted." This passage is open to ambiguous construction; and from the case to which it is applied (the affirmative answer of the prophet to a question from SÂD IBN-İ-BÂDAH, whether, on finding a man with his wife, he should deter killing the adulterer till four witnesses were present to prove the adultery) might be understood to require proof of a plea of justification in all cases of acknowledged homicide. The author of the *Humâdeeyâh*, who cites the *Zeeâdât*, however, deduces from the above quotation, a certain inference that the

* *Hid.* B. *Ikrâr*, or acknowledgment.

† The following case is quoted from KAZEE KHAN in the *F. A.* "A person confesses, saying, *I struck such a one with a sword and thereby killed him.* ABOO YOUSUF declares this confession to establish involuntary homicide only; as the party does not acknowledge that he struck wilfully." In the chapter of miscellaneous cases, which concludes the *Hidâyah*, a general confession of homicide, without its being specified as *wilful*, is noticed as incurring retaliation; but this is not deemed authoritative; nor the distinction between *Hudd* and *Kisâr* on which it is founded. See trans. of *Hid.* Vol. IV. p. 571.

‡ This is inferrible from a case in the *Mabest*, cited in the *F. A.* as follows—"If a person confesses that he has struck such a one with a sword, and thereby killed him; or that he brought a knife and killed such a one; and then say it was not his intention to have killed the deceased, but another person; *kisâr* is prevented by such declaration." It is, of course, supposed that there is no proof of wilful homicide independent of the confession.

statement of an act, under " circumstances, which prevent " its being penal, is a virtual denial of the cause of penalty;" and this conclusion is undoubtedly just and rational when there is no evidence against the acknowledger of the act, besides his own statement of the case.*

If the prisoner plead not guilty to a charge of murder, the evidence requisite to establish it, so as to warrant a sentence of *Kifās*, is the positive testimony of two competent eye-witnesses; of ascertained or apparent credit. The testimony of slaves, deemed the property of their masters, is not admissible in any case; as their state of bondage precludes them from exercising any act of authority; which the delivery of evidence is considered to be. The testimony of women is

Evidence re-
quired to es-
tablish a charge
of murder, or
other homicide,
when denied
by the accused.

* There appears to be some ambiguity, if not inconsistency, in the cases of confessions, which occur in different books of Mohammedan law. In those quoted from *Kāzee-Kāim* and the *Mubet*, the circumstances of the cases are evidently considered to form an essential part of the confession; and the general inference in the *Humādceyah* is clearly to the same effect. Yet the following three cases are cited, in *SIRĀJ-ŌL-HUK*'s treatise on *Tāzeer*, from the *Khuzānu's-sawāyāt*. 1. If a person, killing another, plead that the deceased assaulted him, and prove it, neither *Kifās*, *Diyat*, or *Tāzeer*, is incurred. 2. If he have no proof of the plea of assault, and the slain were a known assailant (*Makābul*) *Kifās* is barred; but the fine of blood is due. 3. If there be no proof of the plea, and the slain were not a known assailant, but, on the contrary, a man of respectable character, *Kifās* is incurred. A case similar to the second, is also quoted from the *fiābeyah*, with an addition, that *lān-izyād* held nothing to be due from the slayer in such case. The following further instance is stated in the *Humādceyah*. " The body of a person killed is found in a house; and the owner of the house alleges that the deceased was a thief who came to rob him, and was therefore killed by him. It is reported from *ABOO HUMERFAH*, that in this case, if signs of the deceased having been a thief be found; or if he were notorious for theft; the owner of the house is not responsible for the homicide. But other reports state, that *Kifās* only is barred; and the fine of blood is due." In the last case, however, the proof of the homicide does not rest entirely upon the confession of the party. And perhaps in the examples quoted from the *Khuzānu's-sawāyāt* the fact of the homicide may be understood as established independently of the slayer's acknowledgment. In a recent *Fatwa* delivered by the Law Officers of the *Nizamut Adālat*, relative to a prisoner named GHOSOO, who confessed having killed his wife; but stated in vindication that he found her in bed with an adulterer; they observed, " In this case there are two opinions. One that the fact pleaded in justification is not admissible without proof: this is *Kifās*, or the apparent construction of the law. The other, founded on *Islahjān*, or a more profound or approved construction, is, that the plea is admissible without evidence. The latter opinion is preferred; and the situation in which the prisoner found his wife affords a presumption of adultery, sufficient to bar *Kifās*.

also not admitted to prove a charge of wilful homicide, on the ground of a tradition, that in the time of the prophet, and his two immediate successors, it was an invariable rule to exclude the evidence of women in all cases inducing *Hudd* or *Kifús*. In cases of homicide not wilful, as in all other cases wherein specific punishment, or retaliation, is not incurred, the evidence of one man and two women is received, as equivalent to that of two men. But if the person accused be a Mosulman, it is requisite that the witnesses against him be also of the same religion. The testimony of *Zimmee*s, or infidel subjects, with respect to each other, is admissible, although they be of different religions. The evidence of a Mosulman is also valid against a *Zimmee*; and the testimony of both has validity against an infidel *Mosslámin*, or protected stranger. But the evidence of the latter is invalid against any person except one of his own countrymen, also a protected alien. Convicted slanderers, atrocious criminals, and persons of known bad principles or character, are not admitted to be sufficient witnesses, from want of credit. And the testimony of near relations or connections, such as father and son, grandfather and grandson, husband and wife, master and slave, in favor of each other, is not admissible, in consideration of their relative interests.*

In what cases of
established wil-
ful homicide,
Kifú is incur-
red.

WHEN a charge of unlawful and wilful homicide is legally established against a sane and adult person, either by his or her confession, or by the requisite evidence, retaliation of death is equally incurred, whether the party slain were an infidel or a *Mosslim*; the slave of another (viz. not the slayer's) or free; a woman or man; an infant or of mature age; sound in body and mind; or sick, dismembered, blind, lame

* The nature of this tract does not admit of the rules of evidence being stated more at length. But they are detailed in a chapter of the *Hidájah*, entitled *Shukúdu*, or evidence.

See Trans. of *Hid*, Vol. IV, p. 665.

or insane; provided, in all cases, that the blood of the deceased was under protection of the law, from permanent residence within the territory of a Mosulman state, in subjection to its authority.* But under this provision the murder of an infidel *Mosfumin*, whether by a *Mosulmán*, or *Zimnee*, does not incur retaliation of death.† Neither is it incurred by a parent, or by any paternal or maternal ancestor, for the murder of his or her child, or other lineal descendant; as well in consequence of a declaration by the prophet that “retaliation must not be executed upon the parent for his “offspring,” as in consideration of the slain having derived his (or her) existence from the slayer.‡ Nor is a master liable to *Kífuls* for the murder of his own slave; or the slave of his child; as the murderer himself would be the person legally entitled to demand retaliation in the former case; and in the latter, as in every case where a child may possess the right of retaliation for death against his parent, the enforcement of such right is prevented by the regard due to parentage. The demand of retaliation is further barred, if the person murdered be the joint slave of the murderer, and of others; the right failing in proportion to the murderer’s share, and retaliation of death not admitting of being inflicted in part only.* The same principle is applicable if the person killed be a slave

In what cases it
is not incurred.

* See Trans. of *Hid.* Vol. IV. p. 279. The instances stated are also cited in the *F. A.* from KÁZER KHÁN; the *Kunz*; *Kholáfah*; *Mohret*; and *Káfée*. SHAFÍ‘EE differs from ABOL HUNEEFAH, and his Disciples, in maintaining that a Mosulman is not to be put to death for killing a *Zimnee*; nor a freeman for killing the slave of another person. His arguments, and those opposed to him, are detailed in the *Hidáyah*, Vol. IV. of Trans. p. 279 280.

† Trans. of *Hid.* Vol. IV. p. 281. Also the *Tubreen* quoted in the *F. A.* But KÁZER NEJIM OÖ’ DEEN remarks that the fine of blood may be adjudged in such cases.

‡ *Hid.* and *Káfée* quoted in *F. A.* The fine of blood however is expressly declared due from the property of the murderer. See Trans. of *Hid.* Vol. IV. p. 350.

* Trans. of *Hid.* Vol. IV. p. 282. With respect to slaves however, it must be remembered, that those referred to in the Mohummudan law, and in a strict view of it alone considered to be legal slaves, are infidels conquered and made captive in war. They are held to be the property of the captors by right of conquest. But a reciprocal right is not admitted, with respect to *Mosulmán*s, or *Zimnees*, conquered by infidels. Nor can any other title legalize the slavery of a Freeman, whether Mosulman or Infidel; so as to bring it within the provisions of the Mohummudan criminal law.

Cases of homicide committed by two or more persons;

appropriated by the owner to the public service.* If a murder be committed by two or more persons, of whom any one is exempt from *Kifās*, such as by the father of the slain, and a stranger; or by an adult person and a minor; judgment of retaliation is barred against the whole; as it also is if two persons jointly commit homicide, one with an iron weapon (being an instrument of murder), the other with a staff, or other instrument of manslaughter. In this case a moiety of the fine of blood is due from the person who struck with the iron weapon; and the remaining half is payable by the *Áukilah* of the person who struck with the staff.† It is stated in the *Hidáyah*, “ If a
 “ number of persons unite in murdering a man, analogy suggests that one of them only is to be put to death in retaliation;
 “ as equality is indispensable in the infliction of retaliation;
 “ and between ten persons (for instance) and one person, there
 “ is no equality. The whole are however liable to suffer
 “ death; analogy being in this instance abandoned for a more
 “ approved construction of the law; because it is related that
 “ when, on a certain occasion, seven of the inhabitants of *Suná,áh*
 “ murdered a man, *Ômur* decreed retaliation upon all
 “ the seven; saying, if the whole people of *Suná,áh* had assisted
 “ in the murder, I should certainly have slain them all; and
 “ also because murder is most frequently committed by force;
 “ and retaliation has been ordained for the purpose of determent, and a warning to the unwary. Each individual concerned is, therefore, as if he alone had committed the act;
 “ and consequently equality is certified, and retaliation incurred; that the lives of mankind may be in security.”‡ A quotation from the *Káfee* is given in the *F. Áálumgeeree* to the same effect. But in the *Jámá óo’ rumooz* it is quoted from the *Zá-*

* *Bundab-i Wuhf. Kholáfah*, quoted in the *F. Á.*

† *Tubneeb* and *Shurb-i-Mubfaat*, quoted in the *F. Á.* It is further stated in the *Hidáyah* (see *Trans. Vol. IV. p. 350.*) that “ in all wilful offences, where retaliation is remitted because of
 “ a doubt, a fine is due from the property of the offender.”

‡ *Trans. of Hid. Vol. IV. p. 302*, with corrections.

hidee, that the rule for retaliation of death, upon several persons committing a murder, is applicable only to such as may have given a mortal wound to the slain; and therefore accomplices employed in watching, or even those who assist in holding the hands and feet of the person murdered, are not liable to *Kifās*. But it is added by KÁZEE NUJM ŌŌ' DEEN that they may be punished, in any mode of exemplary punishment (*Seeāfut*,) at the discretion of the magistrate. The following case is cited from the *Zukheerah* in the *F. Āalumgeeree*. "If a person wound another in the belly, so as to bring his entrails out; and afterwards another cut off the head of the wounded person; the latter is considered the slayer; and liable to *Kifās*, if the homicide be wilful; or to the fine of blood, if involuntary; and the person who gave the belly wound is liable only to the established fine for stabbing the belly, viz. one third, or two thirds, of a complete fine; according as the stab may be entirely through the body, or not. But it is supposed, in the case stated, that the wounded person lived, or was capable of living, a day after receiving the wound in his belly. If, on the contrary, there be no possibility of his living after his receiving the belly wound, and he be at the point of death, when beheaded; the homicide is imputed to the person who gave the belly wound; incurring *Kifās*, or *diyut*, as it may be wilful or otherwise; and the person who struck off the head is liable to *Tāzeer*." It is further quoted from the *Kholāfah*, that "if a person give a mortal wound, from which there is no hope of life; and a second person give a subsequent wound; the former is considered the slayer; if the two wounds have been given successively; or both persons are deemed to have killed the deceased, if the two wounds were given at the same time. In like manner, if one person have given ten wounds; and another person one wound; (supposing all the wounds to have contributed to the homicide;) both are held to have been principally concerned." A quotation from the *Mōontuka* is likewise cited in the *F. Āalumgeeree*, from the *Zukheerah*, that "if a man's throat be cut through, except a small part of
the

the wind-pipe ; and when he has a little life remaining, another person give him a finishing stroke : the latter is not subject to *Kifās*, because the deceased was virtually killed by the first wound ; inasmuch that if his son had died, leaving his father in the expiring state described, the son would be considered the legal heir to his father, as having survived him."

By whom retaliation for murder is demandable.

RETALIATION for murder is considered to be the right of the person murdered ; and to devolve to his legal heirs, who represent him in the exactiō of it. This is declared in the *Hidāyah*. And KĀZEE KHĀN states, to the same effect, that the persons entitled by law to succeed to the estate of the slain, are also entitled to retaliation for his death. This right therefore appertains to the husband, and to the wife, as well as to the heirs of blood ; and the same rule is applicable to the right of *Diyut*.* If the heir to the slain be a minor, or idiot, and his (or her) father be living, the latter is entitled to demand or compound retaliation. But an appointed guardian, not being the father of the minor or idiot, is not so empowered ; and the reason given in the *Hidāyah* is, that " the end of retaliation is relief and satisfaction to the mind ; which are restricted to the father, as he, because of his near relationship, and tender affection, is the substitute of his children with respect to their feelings."† Where part of the heirs are minors, and part adult, ABOO HUNEEFAH is of opinion that the adult heirs alone, or in conjunction with the sovereign or his delegate, on the part of the minors, may demand *Kifās* : but ABOO YOOSUF and IMĀM MOHUMMUD maintain that retaliation of death cannot be demanded, in such case, till the minor heirs attain maturity. The same difference of opinion exists in the case of one or more of the heirs entitled to require *Kifās* being an idiot, or insane,

* SHĀFI'EE and MĀLIK deny the right of the husband, or wife, to demand retaliation, or the fine of blood, for the murder of each other. See their argument, and that opposed to them, in *Trans. of Hid.* Vol. IV, p. 300.

† *Trans. of Hid.* Vol. IV, p. 287, with correction.

or absent; as well as in the case of a murdered slave being the joint property of a minor and an adult.* When all the heirs are minors, some lawyers consider the sovereign, or his delegate, to have the power of enforcing *Kifūs*, in their behalf; whilst others think it should be deferred till one or more of the minors become of age.† It is however generally agreed, that if the murdered person leave no heir or legal representative, the sovereign, and his deputy the *Kazee*, are authorized to enforce retaliation of death ‡ If a slave be murdered, the master (*Moulā*) is entitled to demand *Kifūs*; unless the deceased had been partly emancipated, and was slain before he had paid the ransom for his complete liberation; in which case the master, who has only a partial right, is not authorized to demand retaliation for the murder of him.§ The master of a pawned slave is also precluded from exacting *Kifūs* for his murder whilst in the possession of his pawnee, without the concurrence and joint application of the latter.||

RETALIATION of death, in cases of murder, being considered the private right of the heirs; or with respect to slaves, of their masters; they are at liberty to remit their claim, and forgive the offender; or to compound, with the consent of the murderer, for a compensation.¶ If there be several heirs, and one of them forgive the offence; or compound with the of-

Right of heirs and masters of slaves to remit or compound claim of retaliation.

† Trans. of *Hid.* Vol. IV. p. 287—Also the *Mubet* quoted in *F. A.*

‡ The *Mubet*, quoted in *F. A.*

§ The *Ikklyān*, quoted in the *F. A.* The *Hidāyah* also contains a passage to the following effect, omitted in the English Translation, Vol. IV, p. 287. "The *Kāzee* is authorized, like the father, to exact *Kifūs*; as he represents the sovereign in the enforcement of it; and the sovereign may exact it for the murder of a person leaving no heir."

¶ *Mubet*, and *Futāwā* of *Kāzee KHĀN*, quoted in *F. A.* The principle stated is also recognised in the *Hidāyah*. See Trans. Vol. IV, p. 285.

|| *Kāzee KHĀN*, quoted in *F. A.* and *Hidāyah*. See Trans. Vol. IV, p. 285.

¶ See a full declaration of this right, and the authorities upon which it is founded, (a text of the *Korān*, and saying of the prophet), in Trans. of the *Hid.* Vol. IV, p. 299.

sender; the other heirs are thereby debarred from enforcing *Kifās*; but are entitled to their proportions of the fine of blood. If a man murder two persons, and the heirs of one only forgive him; the heirs of the other are still at liberty to demand retaliation. In like manner when two or more persons are murdered, the heirs of any of them, who may attend and demand *Kifās*, are entitled to the enforcement of it, without waiting the attendance of the heirs of all the slain; and when the offender has suffered retaliation of death for one murder, the heirs of other persons murdered by him are not entitled to claim payment of the fine of blood from his estate.† Nor is such fine payable if the party, liable to *Kifās* for murder, die before the execution of it.‡ But if a murderer, sentenced to suffer *Kifās*, become insane before he has been delivered over by the *Kāzee* to the heir of the slain, he is not to be put to death; and his property is answerable for the fine of blood.§ If he become insane after he has been condemned, and delivered over by the *Kāzee* to the heir of the slain, the latter is at liberty to put him to death, notwithstanding his insanity.¶ It is not requisite that the heir execute the sentence in this, or any other case, with his own hand. But his presence is required; a sword, or similar weapon, is the prescribed instrument; and the established mode of execution is by decapitation. ||

In what cases insanity bars the execution of a sentence for *Kifās*.

By whom and in what manner a sentence for *Kifās* is to be executed.

Retaliation for personal offences.

RETALIATION for offences against the person, not affecting

* *SHĀFI'EE* differs in opinion from *ABOO HUNEEFĀH* and his disciples, on this point. See *Trans. of Hid.* Vol. IV, p. 303.

† *Trans. of Hid.* Vol. IV, p. 304.

‡ The *Kh.āṣab*, and *Tārākhkhawāṣak*, quoted in *F. A.*

§ *KĀZEE KHĀN*, quoted in *F. A.*

|| *Kāzee* and *Mobat*, quoted in *F. A.* See also *Translations of Hid.* Vol. IV, p. 28; where an opposite opinion, by *SHĀFI'EE*, is stated, that on a principle of equality, the murderer should be put to death by the same means, as were used by him in committing the murder; unless the act be such as the law expressly prohibits. The general mode of execution now in practice, both for men and women, is hanging; and the bodies of the former are usually gibbeted near the spot where the crime was committed.

life, is restricted to wounding and maiming in the following instances.

cases, not affecting life, to what cases restricted.

1. For any member of the body severed at the joint; as a hand, arm, foot, or leg. Also for the fingers, and toes, or part of them, if separated at the joint.
2. For an ear, or part of an ear, cut off.
3. For the nose, if completely cut away.
4. For the lips; or either of them.
5. For the teeth; or any number of them.
6. For an injury to the eye, destroying the sight, without forcing the eye from the socket.*

A PERFECT equality, however, being the condition of retaliation for personal injuries not occasioning death; it is not claimable under any circumstances of inequality; such as one party being a man, the other a woman;† the one being free, the other a slave; or both parties being the slaves of different persons, and of different value. Nor is the right hand, or foot, subject to amputation for the left; *on vice versa*; nor a sound member to be amputated for an unsound one. A difference of religion, however, does not bar the demand of retaliation; as the Mosulman and infidel subject are considered to be on an equality with respect to personal protection. Retaliation is not incurred in any cases of dismemberment, except at the joint, from the difficulty of maintaining an equality, as well as danger to life, in enforcing it; and for the like reason it is not allowed in cases of fractures, or injury to the bones, excepting the teeth, which may be ex-

Circumstances under which it is, or is not, claimable.

* The retaliation in this case is to be inflicted by holding a hot iron before the corresponding eye of the offender, till his sight is extinguished. *Ibid.* Trans. Vol. IV. p. 294, and *Kāfee*, quoted in *F. A.*

† *SHAKFEE* maintains a different opinion upon this point. See Trans. of *Ibid.* Vol. IV, p. 295.

tracted with safety. It must further be observed, as a general principle, that retaliation is not due in any case, unless the offence be wilful; which is determined by the evidence and circumstances, without regard to the instrument; as required in the stated distinction between murder and manslaughter.*

Ursh, or fine of blood payable in cases short of life, which do not incur retaliation.

OFFENCES against the person, which do not incur retaliation, subject the offender, if the act be wilful, or his *Ākitah*, if the act be involuntary and the established fine amount to five hundred *dirms*, to the payment of *Ursh*, or the fine of blood in cases short of life. The rate of this fine is specifically fixed in some cases; particularly for dismemberment, and for wounds in the head and face, termed *Shujjah*; and for any material injury to the person, or destruction of faculty, it is equal to the *diyut* for homicide. In other cases, and especially where the injury is partial, or indeterminate, the compensation is left to be settled by an equitable adjustment (*Hukumat ōl ūdl*) which, according to *Tuhāvee*, is to be made by supposing the wounded person a slave, and ascertaining his difference of value,† with or without the wound he has received. If such difference be equal to a twentieth of the full value, before the wound was inflicted, a twentieth of the entire fine of blood is to be adjudged; if a tenth, or any other proportion, the fine to be regulated accordingly.‡—Both *Kifās* and *Ursh*, for personal injuries not affecting life, are however open to composition between the parties; and the injured person is at liberty to remit the penalty, on the same principles of private right and satisfaction, which have been stated with respect to the provisions for homicide.

Both *Kifās* and *Ursh* open to remission, or composition, as in cases of homicide.

† *Hid.* Chapter entitled “*Kifās* in cases short of life.” And Chapter of the same designation, in *F. Ā.* containing quotations from the *Futūwā* of KĀZEM KHAN; the *Kāfīs* *Mobeet*, *Zuk peerab*, *Khuzānut ōl Mōstifereen*, *Jouburab ōl Nj, jurab*, and other authorities.

‡ *Hidayab.* Section respecting fines for offences not affecting life—and corresponding section in the *F. Ā.*

THE second general head of the Mohummudan criminal law, denominated *Hudd*, or *Haddood*, is stated, in the *Hidāyah*, to comprise the specific penalties fixed with reference to the right of God, or in other words, to public justice. It is therefore distinguished from *Kifās*, which is considered the right of man, or private; as well as from *Tāzeer*, which is indefinite, and left to the discretion of the magistrate.* The design of *Hudd* is to deter offenders from the perpetration of criminal acts, injurious to the community of God's creatures. This being a public right, the *Imām*, or his deputy, is exclusively authorized to enforce it. The claim and prosecution of the party injured are not indispensably requisite; and he cannot remit, or compound, the prescribed penalty, as in cases of *Kifās*. But the execution of *Hudd* is prevented by any doubt, or legal defect; and the *Imām* is directed to administer the law with lenity; preferring a dispensation with the legal penalties to the rigid exaction of them, in all cases that may admit of it.†

Second general head of the criminal law, *Hudd*, or *Haddood*. Its general principles; and how distinguished from *Kifās* and *Tāzeer*.

OF the five descriptions of crimes beforementioned as provided for under the general head of *Hudd*, the first is *Zinā*, or whoredom; which is defined in the *Hidāyah* to be "an unlawful conjunction of the sexes;" or with respect to the man, is more particularly described as "the carnal conjunction of a man with a woman who is not his property, either by right of marriage, or bondage; and respecting his property in whom there may be no doubt or presumption" (*Shōbbah*).‡ The same definition, in substance, is quoted in the *F. Aalungeegee* from the *Nihāyah*. In the *Kāfee*, as also cited in the *F. Aalungeegee*, *Shōbbah* is stated to be "that which appears to be just and right but in truth is not;" and with respect to the subject

Zinā, or whoredom. Its legal definition; and in what cases liable to *Hudd*.

Nature of *Shōbbah*, which bars a sentence of *Hudd*.

* *Hid.* Introduction to book of *Haddood*.

† *Bahr-i-rāyik*, *Mabest* of SURUKHIE, *Afshāh 6 Nuzāyir*, and *Tabern*, quoted in the *F. A.*

‡ See *Trans.* of *Hid.* Vol. II, p. 19.

in question, is specified to be of three kinds. 1. *Shōbbah-i-Ijtibāh* or misconception of the act as legal, when it is in fact illegal. It is requisite therefore that such misapprehension should influence the person by whom the act is committed; and must be pleaded by him to bar a judgment of *Hudd*. 2. *Shōbbah-i-Hōkme*, or consequential to the actual existence of some ground of legality, to the practical operation of which there is an impediment. The doubt in this case therefore is independent of the belief of the party; and prevents the infliction of *Hudd*, whether he suppose the act legal, or otherwise; inasmuch that the parentage in this case may be established; though it cannot be in the first description of illegal connection. 3. *Shōbbah-i-ūkd*, or a presumption from marriage; which, according to *ABOO HUNEEFAH*, is sufficient to exempt the parties from the punishment of *Hudd*, whether they know the marriage to be illegal, or not. But his disciples maintain that if the parties marry, with full knowledge of the illegality of the contract, no doubt subsists to preclude the sentence of the law. A similar explanation of *Shōbbah* is given in the *Hidāyah*, with a specification of the following instances of the first and second kinds; viz: of the former, if the woman be the slave of the man's father, mother, or wife; his wife repudiated by three divorces, or completely divorced for a compensation, during her *Īddut*, or period of probation; his *Om-i wulud*, or slave who has borne a child to her master, in her *Īddut*, after emancipation; his fellow slave, belonging to the same master; or a slave delivered in pledge, or borrowed, with respect to the pawnee, or borrower. Of the latter kind, if the woman be the slave of the man's son or grandson; his wife repudiated by an indirect, implied, divorce only; his late slave, sold to another, but not yet delivered; a slave stipulated to be given in dower to his wife, but not yet received by her; and a slave held in partnership, with respect to any of the partners*

* See *Trans. of Hid.* Vol. II, p. 27. Many other instances are given in the *F. A.* But a detail of them would occupy too much room in this summary; and does not appear requisite.

THE stated punishment for the offence of *Zinā*, or whoredom, when legally established, against a man of sound understanding and mature age, being a Mosulman, and free, who has consummated a lawful marriage with a woman of the same description (all of which requisites are implied in the terms *Mohsun*, and *Ihsān*), is lapidation, or stoning to death. If the convicted person be free, sane, and adult; but without the other conditions of *Ihsān*, viz. either not a Mosulman, or unmarried, he is liable to a sentence of one hundred stripes. If he be a slave, the punishment is reduced to fifty stripes, on the authority of a passage in the *Korān*; which declares that slaves shall be subject to half the punishment only of free married persons. The penalties for a man and woman, in like circumstances, are the same; but the latter is not to be stripped, except of her outward garment, to receive the stripes inflicted upon her; and with a further regard to decency she is to receive them in a sitting posture; whereas a man is to be punished standing, and naked, except his girdle. It is also recommended, by the example of the Prophet and *ĀLEE*, though not positively enjoined, that in stoning a woman, a hole in the ground be dug to conceal her body, as high as the breast. In the execution of lapidation, if the charge have been established by witnesses, they are required to commence the stoning; which is to be continued by the *Imām*, or *Kāzee*; and concluded by the by-standers. If the conviction be founded upon the confession of the party, the *Imām* or *Kāzee*, is to begin the stoning, and the people present to finish it. The body is afterwards to receive the usual ablutions, and interment. In scourging for whoredom, it is directed that the stripes be inflicted with a whip (*tāzeeānah*) which has no knots in it; that it be applied with moderation; viz. neither with severity, such as might tend to destruction; nor with a degree of lenity inadequate to the design of correction: and that the hundred stripes be given on different parts of the body, so as not to be attended with danger to life. It is further provided that the punishment of scourging, and stoning, shall

Punishment of
the crime of
Zinā, when es-
tablished.

not be united; the object of the former, which is the correction of the party, being incompatible with the latter; which is intended to be an example and warning to others. The addition of banishment, or imprisonment, for a limited period, to stripes, is left to the discretion of the *Imám* or *Kázee*. The execution of a sentence for scourging, but not for lapidation, is ordered to be suspended in cases of illness; and both are to be postponed, in the case of a pregnant woman, until she be recovered from her labour. *

Evidence required to establish a charge of whoredom.

THE severity of the punishment which the Mosulman Law giver prescribed for whoredom, by a married man, possessing the requisites of *Ihsán*, when established upon full legal evidence, appears to have influenced him in requiring such proof of the offence as can seldom be obtained; and in allowing the punishment to be avoided by means which must, almost always, be expected to prevent the execution of a sentence of lapidation. The evidence of women is not admitted to prove the commission of any offence incurring *Hudd*, or specific punishment; and the positive testimony of four men, of ascertained credit, is requisite to prove a charge of whoredom, if denied by the accused. What has been already stated concerning the qualification of witnesses admissible in cases of murder, is equally applicable to the admissibility of witnesses on a charge incurring *Hudd*; except that, as the prosecution for *Hudd* is of a public nature, the party injured, and his connections, are admitted to be competent witnesses. It is further declared in the *Hid. yah*, † that “ in cases inducing specific punishment, witnesses are at liberty either to give or withhold their testimony; because they are distracted between two laudable actions; namely, the establishment of the penal act, and

* See the whole of what has been stated on the punishment of whoredom in Trans. of *Hid.* Vol. II, p. 8 to 18. The same provisions, and others of less consequence, are quoted in the *F. A.* from the *Káfee*; the *Mubteet* of SURUKHAN; the *Bahr-i ráyik*; *Khazánu ol Mo'ayyid*; *Renáb*; *Mohet*; and other authorities.

† See Trans. of *Hid.* V. II, p. 666.

“ the preservation of character. The concealment of vice
 “ is moreover preferable; because the prophet said to a per-
 “ son who had borne testimony, *verily it would have been better*
 “ *for you if you had concealed it.* And also because he else-
 “ where said—*Whoever conceals the vices of his brother Mosulman,*
 “ *shall have a veil drawn over his own crimes in the two worlds*
 “ *by God.* Besides, the instruction given by the prophet, and
 “ his companions, for the prevention of punishment, is a
 “ proof that the concealment of such evidence as tends to
 “ establish it is commendable.” If less than four competent
 witnesses bear evidence to whoredom, they are liable to the
 punishment of slander; unless the accused subsequently con-
 fess. If four witnesses have given evidence, and one or more
 of them be subsequently found incompetent, as being a slave,
 or previously convicted of slander, the whole of the witnesses
 are also liable to the penalty for that offence. If any witness
 retract his testimony, it is no longer valid. And if one of four
 witnesses retract after the execution of a sentence of lapidation,
 he is responsible for a fourth of the fine of blood, besides be-
 ing punishable for slander. But if five witnesses have given
 evidence, the testimony of one being retracted incurs no pe-
 nalty, and does not affect the sentence; as it is still maintained
 by the requisite legal proof. It is further stated in the *Hidāyah*
 that “ the apparent probity of the witnesses does not suffice in
 “ a charge of whoredom. It is necessary that the magistrate
 “ ascertain their probity, both by an open and secret purgation;
 “ in such a manner that possibly some circumstance may ap-
 “ pear to prevent the punishment; because the prophet has
 “ said—*seek a pretext to prevent punishment according to your abi-*
 “ *lity;* contrary to all other cases, in which the apparent in-
 “ tegrity of the witnesses is, according to ABOO HUNEEFAH, to
 “ be held sufficient.*

* Trans. of *Hid.* Vol. II, p. 4. The evidence required to establish a charge of *Zinā* is also mentioned in the *Tubeen*, *Mabret*, *Mubfoot*, *Idbaryah*, and other works quoted in the *F. A.*

Confession of
parties, under
what restrictions,
sufficient
to establish a
charge of whoredom.

THE confession required to establish a charge of whoredom, in defect of testimony, must be made by a person of sound mind and mature age, four times, at four different sittings of the *Kāzee*; who is directed to turn the party away, without receiving his (or her) confession, the first, second, and third time; and is authorized to suggest a denial, or the mention of circumstances which may exculpate, or absolve from the legal penalty. A person confessing whoredom may also, at any time, retract his confession, even during the infliction of the punishment; and if his sentence be founded upon it, he must be discharged.* A confession, though repeated four times, before any other person than the *Kāzee*, is insufficient for conviction.† The terms of a confession, as well as of testimony taken before the *Kāzee*, must be clear and positive; and must expressly specify the crime of *Zinā*.‡ A confession made in a state of intoxication is invalid.§ As it also is if any compulsion be used to obtain it.|| Conviction of *Zinā* cannot be founded, partly on confession, partly on evidence. And according to some authorities, the testimony of four witnesses is not sufficient to convict, with a single confession.¶ If a man confesses whoredom, and afterwards plead that he is not *Mohsun*, his plea is to be admitted, and he is to be scourged, instead of suffering lapidation.** There is no difference between *Zimmies*, slaves, and free *Mōslims*, with respect to confessions.†† A

* Trans. of *Hid.* Vol. II, p. 5 to 8. Also *Tubāwee*, *Shxmunnec*, *Jou'wab-i n'f-yurab*, *Babr-i rāyik*, and *Mubeet*, quoted in *F. A.*

† *Tubeen*, quoted in *F. A.*

‡ *Fut'h-öl Kudeer*, quoted in *F. A.*

§ *Babr-i rāyik*, quoted in *F. A.*

|| *Kluzārut ōl Mosfiicen*, quoted in *F. A.*

¶ *Kāfee*, *Fut'h-öl kudeer*, and *Kāzee Khān*, quoted in *F. A.* A difference of opinion is stated, between IMĀM MOHAMMUD and ABŪ YOUSUF, if the single confession be after judgment; the former maintaining that *Hadd* should be enforced, the latter that it should not. But (strange as it appears that one corroborative confession should diminish, instead of strengthening, the testimony of the four witnesses) it is said that both agree, a sentence of *Hadd* cannot be passed after a single confession.

** *Eczāb*, quoted in *F. A.*

†† *Mubfoot*, quoted in *F. A.*

man's confession of whoredom with a lunatic woman, or a girl, subjects him to *Hudd*. But a woman's confession of *Zinā* with a madman, or with a boy, does not subject her to the stated punishment.* If one party confess whoredom, and the other allege marriage, *Hudd* is stayed, and the man is answerable for the woman's dower only.†

In a case of conviction upon evidence, if the witnesses or any one of them, decline to stone first, the sentence of lapidation cannot be put in execution.‡ If a convict fly after receiving part of his punishment, and be immediately re-apprehended, he is to suffer the remainder of his sentence.§ But if he be seized after an interval of some days, the further punishment is not to be enforced.|| Lastly, if a man have been guilty of whoredom in several instances; and be punished for one, he is not liable to additional punishment for the remainder. This is declared in the *Hidayah*, with a reason, in explanation, that the design of the punishment in this case being to deter from the commission of the same offence; and it being probable, or at least possible, that this end may be attained by the infliction of it in one instance; it is not lawful to repeat the punishment for any other past offence.¶

Circumstances which prevent execution of a sentence of lapidation.

One punishment suffices for all past instances.

THE second species of *Hudd*, according to the usual arrangement in books of Mohummudan law, is for *Shōorb*, literally drinking, or liquor; but here implying the drinking of wine (*Khumr*) in any degree; and of other prohibited liquors, so as to be intoxicated by them. *Khumr*, of which the use is absolutely forbidden in the *Korān*, and to declare the legality of which in-

Second species of *Hudd*, or *Shōorb*. Definition; and to what liquors it is applicable.

* *Eenāb*, quoted in *F. A.* See the case more fully stated, with the grounds of distinction, in *Trans. of Hid* Vol. II, p. 30, 31.

† *Mohabb*, quoted in *F. A.* See also *Trans. of Hid*, Vol. II, p. 33.

‡ *Fut'h ōl kudeer* and *Tubi,ren*, quoted in *F. A.*

§ *Mubfoot*, quoted in *F. A.*

|| *Īlābeeyah*, quoted in *F. A.*

¶ See *Trans. of Hid*, Vol. II, p. 73.

curs the penalties of apostacy, is defined by ABOO HUNEEFAH to be the crude fermented juice of the grape, which after gathering foam and settling, possesses an inebriating quality. ABOO YOO'UF and IMÁM MOHUMMUD consider the term applicable to the fermented juice, in a spirituous state; whether it have gathered foam or not. There are three other descriptions of prohibited liquor; denominated *Bázik*, *Sukur* and *Nukee,â;i Zubeeb*. The first is the juice of grapes boiled, until any quantity less than two thirds evaporate. It is also called *Monuffuf* when half is evaporated. The second is made by steeping fresh dates in water till they sweeten it. The third is produced by steeping raisins in water, till it becomes fermented and spirituous. The illegality of these liquors being matter of opinion, the drinking them is not punishable, unless it be in a degree to occasion intoxication. If the juice of grapes be boiled, until two thirds evaporate, in which state it is called *Mofullus*, and if drank, not with a view of pleasure, but to invigorate the constitution; it is held lawful by ABOO HUNEEFAH, and ABOO YOOSUF: though not by IMÁM MOHUMMUD, SHAFI'ÎEE and MÁLIK. Liquor produced from honey, wheat, barley, or millet, and not drank to excess, is also esteemed lawful by the two former; and ABOO HUNEEFAH is said to have been of opinion that even intoxication, proceeding from such liquor, is not subject to the penalty of *Hudd*. But, on the authority of *Imám MOHUMMUD*, it has been ruled that intoxication, from any of the liquors specified, as well as from *Nu-beez* (a fermented liquor made by steeping dates, raisins, &c. in hot-water) does not incur the stated punishment. A difference of opinion exists between ABOO HUNEEFAH, and his two disciples, as to the degree of intoxication which is punishable. The former maintains that the party must be so inebriated, as not to understand what is said to him; or to distinguish a man from a woman. The latter consider penal drunkenness to be sufficiently established by confused and incoherent speaking,

What degree of
intoxication is
punishable.

the

the usual sign of inebriety, and this opinion is most generally received*.

THE legal penalty for drinking wine, or being intoxicated with the other prohibited liquors specified, is, if the offender be a free man or woman, eighty stripes with a *Tázecānab*, to be inflicted in the same manner as provided in the case of whoredom; or forty stripes if the drinker be a slave, whether male, or female.† None but persons of the Mosulman faith however, and among those such only as are adult, sane, and capable of speech, are liable to the stated penalty.‡

Penalty for drinking wine, or intoxication with other liquors.

THE crime is established by the voluntary confession of the party; or by the testimony of two witnesses. But it is necessary that the offender be seized whilst in a state of intoxication, or whilst his breath yet smells with liquor; and that he be immediately brought before the *Kázee*: neither his confession, or the evidence against him, being sufficient for his conviction, according to the doctrine of ABOO HUNEEFAH and ABOO YOOSUF, (though it is, in the opinion of IMÁM MOHUMMUD, as in cases of whoredom, at any time not exceeding one month) after the smell of the liquor has ceased; unless he were seized at a distant place, when intoxicated, or when still retaining the smell of the liquor, and the delay in bringing him before the *Kázee* has proceeded from the remote situation of the place of seizure. The smell of the wine however, or even the vomiting it, without the testimony of witnesses, or the drinker's confession, is not enough for conviction; because, as stated in the *Hidāyah*. "The smell alone leads to but a very uncertain conclusion; as this may

By what evidence the offence is established.

* See Trans. of *Hid.* Vol. II. p. 53. Chap. on punishment for drinking; and Vol. IV. p. 154. Book on prohibited liquors. The *Fat'wá* of KÁZEE KHAAN, and *Siráj-jah*, are quoted in the *F. A.* to the same effect.

† Trans. of *Hid.* Vol. II. p. 56. Also the *Kanz* and *Siráj-lauhbáb*, quoted in *F. A.*

‡ *Bahr-i ráyib* quoted in *F. A.*

“ proceed either from the person having drank wine ; or from
 “ his having sat among wine drinkers, from whom he may
 “ have contracted the smell ; and it is also possible that wine
 “ may have been administered to him by force, or menaces,
 “ in which case no punishment is incurred.” A confession
 made during a fit of intoxication is invalid. And if a person
 confessing the drinking of wine, or other prohibited liquor,
 afterwards retract his acknowledgement, it is not admissible to
 convict him for punishment ; which, with respect to wine-
 drinking, is declared to be purely a divine, or in other words,
 a public right.* It is further provided, that the stated punish-
 ment is not to be inflicted whilst the offender is in a
 state of intoxication, that deterrent, the end proposed, may
 be duly obtained.

Punishment not
to be inflicted
during intoxi-
cation.

Third head of
Hudd, or
Kuzuf. Defini-
tion of the of-
fence.

THE third subordinate head of *Hudd* is for *Kuzuf*, or slan-
 der of whoredom ; which, according to the legal definition
 of the term, is committed by a false imputation of whoredom,
 against a man or woman, who possesses the qualifications of
Ihsán ; viz. is free, sane, adult, of the faith of *Islám*, and of
 chaste reputation†. Equivocal expressions are construed
 according to the apparent intention of the speaker ; and if
 they clearly indicate a charge of whoredom, incur the punish-
 ment of slander, unless the truth of the charge be admitted
 or proved‡. No penalty however is due for imputing

* Trans. of *Hid.* Vol. II. p. 55, 56, also the *Siráj-i Wabbáj*, and *Zubereyah*, quoted in the *F. A.*

† Trans. of *Hid.* Vol. II. p. 60, and commentary of *TUHÁVEZ* quoted in *F. A.* This definition of *Ihsán*, with reference to slander, differs from that before stated respecting whoredom, in the substitution of *chastity* (which, according to *TUHÁVEZ*, consists in freedom from any adulterous, dubious, or illegal connection) for the *consummation of a lawful marriage*. The reason given in the *Hidáyah* for requiring chastity in the accused, to maintain a charge of slander, is—“ because no scandal attaches to any other persons than those who are of chaste repute ; and the accuser of an unchaste person moreover speaks truly.”

‡ Several examples of words constituting, and not constituting, a penal imputation of whoredom, are given in the *Hidáyah* ; and many more in the *Zubereyah*, *Futbó! Kaderr*, *Mahab*, *Mubfoot*, *Jenburab-i-Njyurab*, and other authorities quoted in the *F. A.* But it does not appear necessary to specify them.

whoredom to a person who has actually committed that offence, whether in the particular instance stated, or in any other*; provided the fact be established, either by the positive testimony of four competent witnesses; or by the voluntary acknowledgement of the party accused; or by the evidence of two men, or one man and two women, in proof of a confession of the fact.†

THE penalty for slander, when legally established, is declared in the *Korán* to be eighty stripes (which are to be inflicted in the manner already described under the punishment of whoredom) if the offender be free; or forty stripes if he (or she) be a slave‡. But as the *huk šolihid* (right of the individual) is blended with the *Huk šolih* (right of God, or public right) in a case of slander;|| it is requisite that the slandered person if living, or if dead, that the person whose lineage is affected by the imputation, prosecute the charge and demand the stated punishment. The free confession of the accused, or the evidence of two credible male witnesses, is required to prove the accusation. But, in consideration of the private right included in the prosecution, the retraction of a confession, once made, is not permitted.§ An infidel slandering a Mosulman, who possesses the requisite of *Ihšan*, is liable to the stated penalty. And it is declared in the *Hidáyah*, that “ if an infidel residing under pro-

Penalty for
slander, when
established.

Evidence re-
quired to prove
accusation of
slander.

Infidel subjects,
and residents
under protec-
tion, liable to
same penalty, as
Mosulmans.

* *Mubfoot* of SURUKHSEE and *Zubeereyah*, quoted in *F. A.* It is added from the *Eenzáb*, that the witnesses of the accused, to prove the truth of his allegation, are to be heard, if they attend after his conviction, or even after the execution of a sentence against him has commenced; and that, on their establishing the charge, no further punishment for slander is to be inflicted.

† *Mubfoot*, quoted in *F. A.*

‡ Trans. *Hid.* Vol. II. p. 59; and *Fut, šól Kuderr* quoted in *F. A.*

|| Trans. of *Hid.* Vol. II, p. 64. SHAFI'EE contends that the right of the individual is superior to the right of God, the former being necessitous, while the latter is not. ANOO HUNAWAN and his two disciples hold the right of the creator to prevail in preference to that of his creatures.

§ Trans. of *Hid.* Vol. II, p. 64. And the *Iktiyár*, and *Káfie*, quoted in *F. A.*

“ action in a MOHUMMUDAN state, slander a Mofulman, punishment for *Kuzuf* is incurred by him; because, in punishment for slander, individual rights are concerned; and the protected infidel has undertaken to pay due obsequance to the rights of individuals. As he himself desires to be protected from injury; it follows that he undertakes not to offer injury to others; and also that he subjects himself to the legal consequences, if he should.” If a Mofulman, or infidel, suffer the prescribed punishment for slander, his testimony is for ever afterwards inadmissible; unless with respect to the infidel, he subsequently embrace the MOHUMMUDAN faith; in which case, the competency of his evidence is restored, with the addition of being valid against Mofulmans which it was not during his infidelity*.

Effect of punishment for slander upon future testimony of the party.

What persons entitled, or not, to prosecute a charge of slander.

A SON is not entitled to demand punishment for slander against his father, or mother; or his paternal or maternal ancestors; nor a slave against his master; on the principles before stated under the head of *Kifās*.† The execution of a sentence of *Hudd* for slander is also stayed by the death of the slandered person; or, if he die, without having prosecuted for it, no one can claim it, on his account, after his demise.‡ If the party slandered be defunct at the time, his or her father, mother, children, or any paternal ancestor or lineal descendant, may prosecute, provided that injury be shewn to arise to the lineage of the prosecutor from the slander complained of. The son's son, and the daughter's son, have the same right of prosecution; but neither can prosecute for slander upon his maternal ancestors. Nor can brothers, or sisters, uncles, or aunts, claim the infliction of *Hudd* for slander on each other respectively. || In this, as in other cases of

* Trans. of *Hid.* Vol. II, p. 72. And *Tubāvee*, quoted in *F. A.*

† Trans. of *Hid.* Vol. II, p. 63. and *Ezab*, quoted in *F. A.*

‡ Trans. of *Hid.* Vol. II, p. 63. and *Fat. Karkhee* quoted in *F. A.*

|| *Tamiragbee*, *Kāziz Kūān*, *Mohet*, and *Tubāvee*, quoted in *F. A.*

Hudd, the charge may be prosecuted through a *Vakeel*, or constituted agent, according to the opinion of *ABOO HUNEEFAH* and *IMÁM MOHUMMUD*. But it is generally agreed, that the claimant must attend in person for the execution of the sentence. * The following differences between the rules of *Hudd* for *Zinā* and *Kuzuf* are stated by *KÁZEE KHÁN*. 1. *Hudd* for slander is not prevented by a lapse of time, as it is for whoredom and drunkenness. 2. *Hudd* for slander is not inflicted without the claim of the slandered person; but for whoredom it is. 3. It is stated, as a further difference, in the *Fut'h ōl Kudeer*, that the *Kázee* may found a conviction of slander upon his own knowledge, obtained during his office; though not upon his previous knowledge, without additional evidence. In the *Eezāh* it is declared commendable to relinquish the prosecution of a charge for slander, and the *Kázee* is authorized to advise the complainant to renounce his claim, at any time before the charge is established. It is further stated in the *Hidāyah*, that a single punishment for slander, as for whoredom and wine-drinking, includes all past offences; the design not being private satisfaction (as maintained by *SHÁFI'ĪEE*, on the doctrine that the right of the individual predominates in cases of slander;) but, on a principle of public justice, to deter, by an example, from a repetition of the offence in future. †

Differences between rules of *Hudd*, for *Zinā*, and *Kyās*.

It is stated in the *Eezāh* that it is commendable to renounce the claim.

A single punishment includes all past offences.

Surikah or larceny, the last offence specifically provided for under the general head of *Hudd*, is distinguished as *Surikah-i-Soghrā*, and *Surikah-i-Kobrā*, or literally, *Petit* and *Grand Larceny*; but not in the sense for which these terms are used under the English law, to denote the stealing of goods not exceeding, or exceeding, the value of twelve pence. As applied by the Mohummudan law, they correspond more nearly, though not exactly, with the distinction of *theft* and *rob-*

Surikah, or larceny, is distinguished as *Soghrā* and *Kobrā*.

* *Fut'h ōl Kudeer*, quoted in *F. A.*

† See *Trans. of Ind. Vol. II*, p. 73. 74.

bery; the former designation implying secret larceny, by stealth; the latter, open larceny, by force and violence.

Legal definition of *Surikah*; and application of it to charges of theft, and robbery.

THE legal meaning of *Surikah* is defined, in the *Hidāyah*, to be “ a responsible (viz. a sane and adult) person's wrongfully “ and furtively taking the undoubted property of another, “ when such property is in due custody; and the value of it “ not less than ten *dirms*.” * The furtive or clandestine taking, in cases of highway robbery, is explained to respect the *Imam*, or chief magistrate, whose province it is to guard the highways by means of his assistants; and, in cases of private larceny, is stated to respect the individual proprietor, or his representative. The secrecy, or stealth, included in the primitive sense of the word *Surikah*, is further explained as applicable to the beginning only of the act, when a theft is committed during the night; it being usual for a thief to enter or break into a house secretly, at night, and then to take away the property by violence, as the owner cannot obtain ready assistance. But in the day time, when aid can be easily procured, and when therefore the forcible seizure of property is seldom attempted, the condition of furtively taking away includes both the beginning and end of the transaction, to establish a charge of theft. † The custody requisite for maintaining such charge, or an accusation of robbery, is of two kinds. 1. *Hirz ba Mukān*, or custody of place, being such place as is generally used for preserving the property contained in it; whether a house, shop, tent, or other receptacle: to constitute theft from which it is not material that the door be shut; but it is essential, to complete the crime, that the property be taken out of the place of custody. 2. *Hirz ba Hāfiz*,

* See Trans. of *Hid.* Vol. II, p. 22, where the definition is given some what more at length. It is also quoted in the *F. A.* from the *Ikkhiyār* in nearly the same terms.

† *Hid.* Trans. Vol. II, p. 83. and *Nahr-i-Fāyih* quoted in *F. A.* The case of secretly breaking into a house at night, and forcibly bringing out property under resistance from the owner, is expressly stated in the *Mabarrat* of SURUKHSHI, as subject to the prescribed penalty of amputation; but that punishment is declared not to be incurred, if the same offence were committed by day.

or personal guard; from the watch of a person over the property, which, if near to him and within his sight, is considered to be under his custody, though on a road or plain; and whether the keeper be asleep or awake. The actual seizure of it, when so watched, is further deemed sufficient to establish the crime of theft, whether the property be taken away, or not. * The standard of value for inflicting the punishment of theft is stated in the *Hid'yab* to be fixed at ten *dirms*, (or from two to three rupees according to different calculations) on the authority of a tradition from the prophet importing that "there is no amputation for less than a *deenār* or ten *dirms*."† The *dirm* of the highest current value is to be used in the computation; and in cases of doubt, the property is to be appraised by two persons duly qualified for the purpose.‡

A CHARGE of theft is established by the voluntary confession of the party accused; or by the testimony of two credible male witnesses. A single confession is sufficient, according to the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD; though ABOO YOOSUF requires a repetition of it.§ But the *Kázee*, with a view to prevent the infliction of the prescribed punishment, is authorized to advise the thief not to confess||. A retraction of confession is also admissible (if there be no other proof) to stay a sentence of *Hudd*, though not to save from a restitution of stolen property.¶ A confession of theft committed on a person or persons unknown is insufficient for conviction.** If two or four persons confess a joint theft, and half the number retract, the remainder can-

Evidence required to establish a charge of theft. And instruction to the *Kázee* in trying such charge.

* *Hid. an Sir'ij i-awkbáj* quoted in the *F. A.*

† SHAFI'EE contends that the standard is the fourth of a *deenār*; and MÁLIK supposes it to be three *dirms*; as the lowest value of a shield; for which amputation was inflicted in the time of the Prophet. See their argument, and that of ABOO HUNEEFAH and his followers. Trans. of *Hid.* Vol. II, p. 84.

‡ *Mubret* and *Tuheen* quoted in *F. A.*

§ See their different opinions in Trans. of *Hid.* Vol. II, p. 86.

|| *Zuhereeryab*, quoted in *F. A.*

¶ *Hid.* Vol. II, of Trans. p. 86, and *Ikkijár* quoted in *F. A.*

** *Zukkerab*, quoted in *F. A.*

not be convicted for punishment on their confession only. Nor can a conviction be founded upon a confession of stealing property, of which part is declared by the person robbed to belong to the thief.† But a confession of having committed a theft, with another person not apprehended, is conclusive for the conviction of the party confessing, without the attendance of the other, provided he acknowledge the taking ten *dirms* or more‡. The confessions of infants, before they have shewn signs of maturity, are invalid;§ as are likewise all confessions extorted by compulsion.¶ If the person accused of theft deny the charge, it is incumbent upon the accuser to prove it; or, in defect of proof, the accused may be put upon his oath, to exculpate himself; if he decline which, he may be made answerable for the property stolen; but is not liable to punishment; nor, according to the *Futāwā-i Kōōbrā* is it legal, in any case, to beat him, without conviction; though the jurist *ABOO BUKR AĀMUSH* is cited, as declaring it to be at the discretion of the *IMĀM*, when he may suspect the accused of being the thief, and of having the stolen property in his possession, to chastise him, for the purpose of making him confess and deliver up the property.¶ The evidence of women is not admissible, in any case, to ground a sentence of *Hadd*. But the testimony of one man, and two women, may be admitted to establish a right to stolen property, as in other cases of private right. The *Kāzee* is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be not produced in court. He is also enjoined to ascertain their credit, if it appear doubt-

* *Isabeeyah*, quoted in *F. A.*

† *Mobeet*, quoted in *F. A.*

‡ *Mobeet*, quoted in *F. A.*

§ *Mobeet*, quoted in *F. A.*

¶ *Zubeereyah* quoted in *F. A.* A modern opinion, in favor of the validity of a forced acknowledgement is also noticed; but it is not deemed authoritative.

¶ *Zukheerah*, and *Fut. Kōōbrā*, quoted in *F. A.*

ful. If the accused be a *Mosulman*, the witnesses to prove the charge against him must be of the same persuasion; and if two infidels depose to a theft jointly committed by a *Mosulman* and an infidel, their evidence is declared insufficient to convict either. It is further declared that if two witnesses depose to the commission of a theft by one person, and two to it's having been committed by another person, neither can be convicted on their evidence, though the party robbed should charge one of them.* If two witnesses depose to a confession of theft by the accused; and he deny; or be silent; such evidence is not sufficient for his conviction.† Nor is a confession of having taken property, without an express declaration that it was stolen. And both the prosecutor and witnesses are permitted to use terms, in their depositions, which may secure the right of property to the owner; without subjecting the party accused to the punishment of theft.‡

THE penalty to be adjudged on a legal conviction of the crime of theft, when the property stolen by the convict amounts to ten *dirms*, is, for the first offence, amputation of the right hand, and for the second, amputation of the left foot. In the event of any further repetition of the offence, he is to be imprisoned till he shew signs of reformation, or eventually for life. And discretionary punishment (*Tázeer* or *Secafut*) extending to death, may be inflicted, if the circumstances of the case appear to require it.§ If the left hand, or right foot, of the convicted thief be paralytic; or have been lost by accident; his right hand, or left foot, is not to

Penalty for theft, on conviction; with restrictions on execution of it

* *Mobet*, quoted in *F. A.*

† *Tátárbháneyah*, quoted in *F. A.*

‡ *Sirájeyah*, quoted in *F. A.*

§ *Hid.* Vol. 11, of *Iran*, p. 107. and *Sirájeyah*, quoted in *F. A.* The terms of the latter are "The *Imám* may put the thief to death, for the purpose of *Secafut*, or exemplary punishment, as he is a practised disturber of the peace" *SHAFI'EE*, on the authority of a tradition from the prophet, which is not admitted by *ABOO HUNERFAH* and his disciples, maintains that the left hand is to be cut off for the third, and the right foot for the fourth, offence.

be amputated; that he may not be deprived of the power of holding, or walking; or of the use of two members on the same side. The rule is equally applicable if the thumb, or any two fingers, of the left hand, be lost or useless, as in such a state the hand is considered incapable of performing its office; but this inability is not supposed, when one finger only of the left hand is lost, or useless; and the amputation of the right hand is not therefore prevented by it*. Nor is the amputation of the right hand prevented by any paralytic affection of that hand, or any defect in the fingers of it. If however the toes of the right foot have been lost, so as to prevent the party's walking with that foot, amputation of the right hand is not to be adjudged†. A previous loss of the left foot does not prevent the right hand being cut off, nor does a previous loss of the right hand prevent amputation of the left foot§. If sentence be passed for cutting off the right hand of a thief; and the executioner, either intentionally, or by mistake, amputate the left hand; according to ABOO HUNEEFAH, no responsibility is incurred; but his two disciples hold the executioner responsible, if his act were intentional||. All agree however that no responsibility attaches, if the thief himself put forth his left hand and say "This is my right hand." And that, as the amputation of the left hand is not the prescribed punishment for theft, the thief remains answerable for the value of the property stolen; which he is not when the right hand is cut off according to law, on a general principle, that amputation and responsibility for property (beyond the restitution of stolen goods forthcoming) cannot be united¶.

* *Hid.* Vol. II, of Trans. p. 109.

† *Tubeen* quoted in *F. A.*

‡ *Mubfoot* quoted in *F. A.* The same bar must be understood, *a fortiori*, to the amputation of the left foot, when the right cannot be used.

§ *Tubdvee* and *Mobeet* quoted in *F. A.*

|| See their different arguments in trans. of *Hid.* Vol. II, p. 110.

¶ *Hid.* Vol. II, of Trans. p. 111.

BUT as in other cases of *Hudd*, where the fixed penalty is severe and against the feelings of humanity, numerous provisions have been made by the legislator for dispensing with, or rather evading, the law, by qualifications, restrictions, and conditions; some one of which must so frequently intervene, as to render actual mutilation for theft of rare occurrence; except in cases of enormity, attended with circumstances that appear to justify and require an example of determent.

Numerous provisions for dispensing with the punishment of mutilation.

A PERSON stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each other; as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation * A husband, or wife, stealing the property of each other, or a slave stealing the property of his master, or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other.† In like manner a master, stealing the property of his slave for whom a ransom is stipulated, or whom he has

Examples of cases, in which the penalty is, or is not, incurred.

* *Hid.* Vol. II. of Trans. p. 98. And *Put, b' ōl Kudēs*, quoted in *F. A.*

† *Hid.* Vol. II. of Trans. p. 99. And *Ghāyut ōl biyān*, quoted in *F. A.* In the *Sirāj-i-wabbāj* the same principle is applied to a divorced wife, during the period of her *ʿiddat*: as well as to the case of a thief marrying the woman, whose property he has stolen; even although sentence of amputation should have been previously passed against him. In the *Mobet* a slave's stealing from his master's father or mother, or any of his master's relations within the prohibited degrees, is declared to be exempt from amputation, in like manner as if the master himself had committed the theft.

licensed to trade, is not subject to amputation, unless, in the latter instance, the slave have contracted a debt, in which case his property is considered to be in pledge for his creditor * Amputation is not incurred for stealing property out of a public bath, or from a house of general resort, in the day time; when the custody of such places is questionable. But for thefts in the night time, when strangers are not allowed ingress, the prescribed penalty is to be inflicted.† If a guest steal the property of his host, he is not liable to amputation; as he has been allowed to enter the house; and his offence is considered to be rather treachery than theft.‡ Nor is a servant subject to the stated penalty for stealing the property of his employer, out of an apartment to which he is allowed access § In cases of burglary, if a thief break through the wall of a house, enter and take property, and be seized before he has carried it out of the house, amputation is not incurred; nor is it, if he give the property, at the entrance of the breach, to an accomplice standing without; because the thief who enters the house does not carry out the property, which previously to his coming out of the house, falls into the possession of another; and the thief who receives and takes away the property has not committed any violation of custody. The whole of the conditions of theft therefore are not found in this instance. But if the thief, who enters the house, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of Abou Yoosuf; from whom it is further recorded, that if the thief within the house put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach, into the house,

* *Mohet*, quoted in *F. A. And Hid.* Vol. II. of *Trans.* p. 100.

† *Hid.* Vol. II. of *Trans.* p. 102. And *Ikktyár*, quoted in *F. A.*

‡ *Hid.* Vol. II. of *Trans.* p. 102.

§ *Siráj-i awbkháj*, quoted in *F. A.*

and thus take the property from the other within.* The principle which governs the latter case is the same as that of a party and thieves, who enter a place of custody, and some take away the property, whilst the others stand by; in this case, the whole incur amputation, as in robbery by open violence; because the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence.† But according to the *Zābir ḥo' ruwāyat* the violation of custody must be completed, by the entrance of the thief into the place of custody, whenever this may be practicable; and therefore if a person make a breach in the wall of a house, put his hand through, and take out property, without entering the house, he does not incur amputation.‡ If a thief break a hole in a house, and go away, and the owner of the house, though he observe the hole, or though it be visible to passengers, omit to close it; and the thief return another night, and take property from the house; amputation is not incurred. Nor is it for two or more successive thefts, each of less than ten *dirms*, if the owner, after being advised of the first theft, neglect to repair the breach. But if the owner be not advised, the value of the several thefts may be computed collectively§. If a person keep his money tied in his sleeve in such a manner that the knot containing it is within the sleeve, and a cut-purse steal it by putting his hand under the sleeve, and tearing away the part which contains the money, he is liable to amputation; as he also is if the knot be tied on the outside, and on being opened the money fall within the sleeve,

* *Hid.* Vol. II. of Trans. p. 103. And *Fut. Karbāe* quoted in *F. A.* But it is added that *ABOO HUNEFAN*, in the case last stated, does not consider either of the parties liable to amputation. The author of the *Nihāyah* also remarks, on the case of a thief throwing effects out of a house, near the breach, and afterwards carrying them away, that the better opinion is against amputation.

† *Hid.* Vol. II. of Trans. p. 105:

‡ *Hid.* Vol. II. of Trans. p. 105. *ABOO YOUSUF* maintains that the hand of the thief should be struck off; because he has taken the property out of a place of custody; which is sufficient to constitute theft, without personal entrance.

§ *Sirāj-i-munabbāʾ*, quoted in *F. A.*

and is taken from thence by the thief. But if the knot be on the outside and torn away; or on the inside, and opened from without, the penalty is not incurred; the interior part of the sleeve, which is considered the place of custody, not being violated in the two latter instances.* If a person steal one of a string of camels, or a load from one of them, he is not liable to amputation; from a doubt whether the camel be in legal custody: unless there be a guard (exclusive of the driver, or rider) for the express purpose of watching the camels; in which case the penalty is incurred: as it also is, if the thief break open a package, and take away its contents, whilst under personal custody.† If some of a party of travellers steal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common.‡ If a person enter a house by unlocking the door with a false key, in the day time, and take away the effects when no person is present, he is not subject to amputation. But if any of the family be in the house and not privy to the theft, the prescribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and steal, he is not liable to amputation. But if the door be shut, though not fastened, and he enter clandestinely and take away property, it is stated in the *Huwee* that he incurs the penalty of theft: as he also does if he enter the house at night, and take away property either by stealth or force, after the hour of evening prayer; unless his entering the house be known, at the time, to the owner.§ It is further stated in the *Huwee*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten *dirms*, be stolen from the enclosure, amputation is incurred, whether the owner be present or not. But for cattle stolen from pasture

* *Hid.* Vol. II. of Trans. p. 105. And *Kiſſe* quoted in *F. A.*

† *Hid.* Vol. II. of Trans. p. 106. Also the *Surâj-i-wuhkâj* and *Zukherab*, quoted in *F. A.*

‡ *Snâjeryah*, quoted in *F. A.*

§ *Mabett*, quoted in *F. A.*

ground, the penalty of theft is not due, unless there be a watchman with them, for the express purpose of guarding them.*

AMPUTATION for theft is not incurred on account of things which, in their original nature, were of common use, and which in their actual state, are not esteemed a valuable property; such as wood, canes, grass, fish, fowls, game, brimstone, limestone, red-earth, mud, clay, dung, and similar articles; *ĀĀ,ÉSĪAH*, the wife of *MOHUMMUD*, having declared that in the prophet's time the stated penalty was not inflicted for such petty thefts; and the exemplary punishment of them is not judged requisite; besides which the custody of some of the articles specified is esteemed defective.† Nor is amputation incurred for the theft of things which quickly spoil and decay; such as milk, flesh, and fruit (excepting dried dates, or other fruit kept in store) the prophet having expressly interdicted it for these articles.‡ Nor for fruit upon the tree, or grain upon the stalk; these not being considered in custody. Nor for any intoxicating liquor; which is illegal or doubtful property§. Nor for a drum, or other musical instrument of small value, and used for amusement only||. Nor for a *Korān*, though ornamented; as the custody of it is on account of its contents, not for the binding or ornaments; and moreover the person taking it may plead that his intention

Descriptions of property, for stealing which amputation is not incurred.

* *Zakbeerah*, quoted in *F. A.*

† Trans. of *Hid.* Vol. II, p. 87. Also the *Mohet* and *Kifet*, quoted in *F. A.* But utensils made of wood, *Bughlāt* mats, and other articles of which the workmanship may be more valuable than the utensils, are declared subjects of custody and of theft. *ASOO YOUSUF*, and *SHAFI'EE* further maintain, that amputation is incurred by the theft of any article to the prescribed value, except mud, clay, and dung.

‡ Trans. of *Hid.* Vol. II, p. 88. And *Sirāj-i nawā'ij* quoted in *F. A.* Also the *Zakbeerah*, including dried, as well as fresh fruits, in years of scarcity.

§ *Hid.* Trans. Vol. II, p. 89, and *Tumurtābee* quoted in *F. A.* with extension of the principle to pork, hawks, and birds in general,

|| Trans. of *Hid.* Vol. II, p. 89. and 92. But a flute made of any scarce or valuable wood is excepted; and declared to be an object of custody, as held in estimation. The author of the *Mohet* also states a difference of opinion with respect to a military drum, if ten *du* in value; as this is not in use for amusement.

was to read it only*. Nor for any other book, except a book of accounts, the contents of which not being the object of the theft, the paper, and other materials of which it is composed, are deemed appreciable property.† Nor for the door of a mosque, as this is not an object of custody‡. Nor for a crucifix, chess-board, or chess-pieces, though of gold; as the thief may excuse himself by saying that he took them with a view to destroy them; being things prohibited§. Nor for stealing a free-born infant, with ornaments on his body; because a free person is not property; and the ornaments are appendages only; besides which the thief may plead that he took up the infant, when crying, with a view to appease it, or to deliver it to its nurse||. Nor for stealing an adult slave; as such an act is ascribed rather to violence, or fraud, than to theft; but if an infant slave be stolen, according to ABOO HUNEEFAH, and IMÁM MOHUMMUD, amputation for theft is incurred; but ABOO YOOSUF holds a different opinion, on the ground that a slave, though considered to be property as such, is not property with regard to his original nature, as a man¶. Nor for a dog, or lynx; because such an animal is free by nature, and there is a difference of opinion respecting the property of them**. A breach of trust does not incur amputation; as the article entrusted is not in custody of the proprietor. Nor is it incurred by openly

Other descriptions of theft which do not incur amputation.

* *Hid.* Vol. II, of Trans. p. 89, 90, SHAFI'EE, and ABOO YOOSUF maintain a different opinion.

† *Hid.* Vol. II. of Trans. p. 92. Also *Siráj-i-munbájj* and *Moheet*, quoted in *F. A.*

‡ *Hid.* Trans. Vol. II, p. 90, 'The door of a house is also not considered an object of custody, unless it be separate and portable. See Vol. II, Trans. of *Hid.* p. 93. Also *Tabereen* quoted in *F. A.*

§ *Hid.* Vol. II, of Trans. p. 90, and *Jeebnrah-i-Ny, yurah*, quoted in *F. A.*

|| *Hid.* Vol. II, of Trans. p. 91, and *Siráj-i-munbájj*, quoted in *F. A.* ABOO YOOSUF considers amputation due for stealing the ornaments, if the value of them be ten *dirms*.

¶ *Hid.* Vol. II, of Trans. p. 91. Also *Futb eíl Kadeer*, and *Nahr-i-fáyik* quoted in *F. A.* It is added, in the latter, that the principle stated, relative to an adult slave, is applicable, although the slave be an idiot, or mad or asleep, when he is stolen. It is further stated, in the *Moheet*, that amputation is incurred for the theft of an infant slave worth five *dirms*, with ornaments on him for the value of five *dirms* more.

** *Hid.* Vol. II, of Trans. p. 92, and *Tumutáflae* quoted in *F. A.* It is added from the *Moontaka*, as cited in the *Zukherah*, that amputation is not to be inflicted, although the dog have on his neck a collar worth a hundred *dirms*.

seizing or snatching away a thing, as such an act is not theft; and the prophet has said that "the hand of a plunderer, or "snatcher of property, or of a trust-breaker, is not to be cut "off."* A *Nubbāsh* or stealer from the dead, viz. of a winding sheet, or other apparel of the dead, is also not liable to amputation, according to *ABOO HUNEEFAH*, and *IMÁM MOHUMMUD*; though *ABOO YOOSUF* and *SHAFI'EE* maintain that he is †. If a person steal property of which he is, in part, owner, he is not subject to amputation. And on the same principle, it is not incurred by any *Mosulman*; stealing from the public treasury in a *MOHUMMUDAN* state; as every thing in it is considered to be the common property of *Mosulmans*, and the thief has consequently a share in it ‡. Lastly, if a creditor steal from the property of his debtor, to the amount of his debt only, amputation is not incurred; as this is deemed to be an enforcement of right, not theft§.

A SENTENCE of amputation cannot be passed upon a thief, without the attendance and prosecution of the person whose property has been stolen; or his representative. The reason assigned in the *Hidāyah* is, "because prosecution is essential to the manifestation of theft; and, with respect to this "rule, it matters not whether the theft be established by confession, or by evidence; because an offence, committed "against the property of another, can, in no way, be rendered manifest, but by the prosecution of the aggrieved

Further requirements, for the prosecution of a charge of theft, and punishment of the offender.

* *Hid.* Vol. II, of Trans. p. 93.

† See their respective arguments in Trans. of *Hid.* Vol. II; p. 94. In the *Sirāj-i-awwāhāj* and *Kāfee*, quoted in the *F. A.*, the exemption from amputation is extended to a theft of money, or effects, from a coffin, or sepulchre: though a difference of opinion is stated to have obtained in the case of a locked apartment.

‡ *Hid.* Vol. II, of Trans. p. 94, 95. Also *Nibāyah* and *Tubeen* quoted in *F. A.* In the former the principle is extended to property taken in war, and declared to be equally applicable to slaves and freemen.

§ *Hid.* Vol. II, of Trans. p. 95, and *Sirāj-i-awwāhāj* quoted in *F. A.* There is a difference of opinion, if the creditor, instead of taking money, steal the effects of his debtor: as he is not at liberty to seize and dispose of such without the debtor's consent. But *ABOO YOOSUF* contends that the creditor may seize the goods of his debtor, to obtain his right, or by way of pledge; and *ABOO HUNEEFAH* and *IMÁM MOHUMMUD* admit the creditor to be functionary for committing the punishment of theft, on the ground of *ABOO YOOSUF*'s opinion.

ed.* Besides the owner of the property stolen however, a depository, a borrower with or without interest, a hirer, an usurper, a partner in concerns of *Mozárubut*, or *Mooslubzá*, a mortgagee, a father, or any other legal guardian, having possession of the stolen article, is declared competent to prosecute in cases of theft.† If the stolen property be again stolen from the possession of the first thief, and the latter have suffered amputation, it cannot be demanded against the second thief; but if the first thief be not convicted, or have not undergone the punishment for theft, it may be enforced, at his requisition, against the second thief‡. If the stolen property be returned by a thief to the owner before any prosecution is instituted against him, he cannot be sentenced to suffer amputation. But this sentence is not prevented by a restoration of property after the charge is preferred, and evidence adduced in support of it §. Execution of a sentence for amputation is stayed however by the gift or sale of the stolen property from the owner to the thief; whether prior or subsequent to the judgment of the *Kázee* ||. Amputation is likewise stopped, if, after the sentence, a reduction in the market value of the stolen article bring it below the legal standard of ten *dirms*; but this principle does not apply to any other deterioration, from damage to the property, or any cause excepting a fall of price ¶ It is declared in the *Hidāyah* that “ if, after witnesses bearing

* Trans. of *Hid.* Vol. II, p. 112. Also *Zād ōl fikhā* quoted in *F. A.* In the latter, *ABOO YOUSUF* is stated to have maintained an opinion, that a thief might suffer amputation whether the person robbed be present or not. And a similar opinion is noticed in the Persian and English Translations of the *Hidāyah* (but not in the Arabic original) as entertained by *SHAFI'EE* when the thief is convicted on his own confession.

† *Hid.* Vol. II, of Trans. p. 112, and *Kāfee* quoted in *F. A.* *SHAFI'EE* and *ZÖSUA* deny the right of prosecution to any except the proprietors.

‡ See the reasoning upon which this distinction is founded, in Trans. of *Hid.* Vol. II, p. 115.

§ *Hid.* Vol. II, of Trans. p. 116.—Also *Kāfee* quoted in *F. A.* *ABOO YOUSUF* maintains that amputation may be adjudged, whether the property be restored before, or after, the accusation.

|| *Hid.* Vol. II, of Trans. p. 116. Also *Fatāwā ōl Kaderr* quoted in *F. A.* *SHAFI'EE* and *ZÖSUA* (with *ABOO YOUSUF* according to one report) differ from the opinion stated. See the argument in Trans. of *Hid.*

¶ *Hid.* Vol. II, Trans. p. 117, and *Mabarrat* quoted in *F. A.*

“ evidence to a theft, the thief plead that the article, alleged
 “ to have been stolen, is his own property; his hand is not to
 “ be cut off; although he produce no evidence in support of
 “ his plea.”* SHÁFIʿĪEE justly objects to this doctrine, “ that,
 “ every thief has it in his power to plead the property being
 “ his own; and therefore if punishment be remitted on such
 “ a plea, the door of it must be altogether closed.” But the
Hunefee-yah doctors reply, that “ doubt occasions the remis-
 “ sion of punishment; and doubt is established by the plea,
 “ since it may possibly be true.” They add that SHÁFIʿĪEE’s
 objection is of no weight “ because retraction and denial are
 “ admitted after confession, although a person confessing have
 “ it always in his power to retract and deny.” But this rea-
 soning, however applicable to confessions, when there may
 be no other proof, is obviously inapplicable to a case establish-
 ed by evidence; and SHÁFIʿĪEE’s objection to the prevalent
 doctrine therefore remains, as noticed by Mr. HAMILTON,
 “ altogether unanswered:” or, at least, unrefuted. The same
 rule is applied in the *Hidāyah* to the case of two persons con-
 fessing a theft, one of whom afterwards pleads that the pro-
 perty was his own. In this case, it is stated, “ amputation is
 not inflicted upon either; because the retraction is admitted
 with respect to the person retracting; and this gives rise to a
 doubt in regard to the other person; since theft is confessed
 by each of them as a joint act.”† Evidence of a theft jointly
 committed by two persons, one of whom only is present and on
 trial, will however convict the one present, without waiting the
 attendance of the absentee.‡ On a trial for theft, if the per-
 son, whose property is said to have been stolen, declare, even af-
 ter conviction and sentence, that the property belonged to the
 party accused, and was held in trust for him; or that the wit-

* Trans. of *Hid.* Vol. II. p. 118. Also *Mabest*, quoted in *F. A.* in which the principle is first stated with respect to a case of confession; and extended to one founded upon evidence; perhaps by inadvertency.

† Trans. of *Hid.* Vol. II. p. 118, with verbal alteration.

‡, *Hid.* Vol. II. of Trans. p. 118.

nesses against him have given false evidence; or (if he have confessed) that his confession is erroneous; or make any other declaration, whereby a doubt can arise of the guilt and legal conviction of the prisoner, he is not to suffer amputation.* Other cases, in which a sentence of mutilation, or the execution of it, is prevented, are detailed in the *Futāwā-i Aalumgeeree*; but a further specification of them appears unnecessary. It will be sufficient to add, that any stolen property found in the possession of a thief must be restored to the owner; and that the latter has an option to demand the value of his property, or the prescribed punishment, previously to execution of the sentence; but after suffering amputation, the thief is not further answerable for the property.† Any sale or gift of stolen property by the thief is however declared null and void. And if another person, after punishment of the thief, destroy or consume it, he is answerable to the owner for the value of it.‡ One punishment for theft, by amputation, as in other cases of *Hudd*, includes all past instances; but does not preclude a further punishment for any future repetition of the offence; as far as the restrictions before stated, concerning amputation, may admit of it.§

Stolen property forthcoming must be restored to the owner; who, previously to the thief's being punished, may demand from him the value of property taken, but not afterwards.

Sale or gift of stolen property invalid. And possessor answerable to the owner.

One amputation for theft, includes all past instances.

Surikah-i-kobrā; also called *Kitā'at-tureek*, now defined; and what circumstances requisite for enforcing penalty of it.

Surikah-i-kobrā, or, as it is otherwise termed, *Kitā'at-tureek*, meaning literally, *cutting off the highway*, and technically, *highway robbery*, is thus defined in the *Hidayab*. "When a party go forth, with force capable of resistance, for the purpose of committing robbery; or when a single person goes forth with that intent, prepared for resistance, under confidence in his strength and courage; the party so acting is called *Ruhzun*, in the Persian language, and *Kitā'*

* *Mobeet*, quoted in *F. A.*

† *Hid.* Vol. II. of *Trans.* p. 122, with *Mobeet* and *Sirdj-i-awbbāij*, quoted in *F. A.* *Suḥrāwirdī* maintains that satisfaction for stolen property is due, in addition to the punishment of amputation.

‡ *Mobeet*, and *Erzāb*, quoted in *F. A.*

§ *Hid.* Vol. II. of *Trans.* p. 124. And *Erzāb* quoted in *F. A.*

"*ḥol turceek* in the Arabic." In the *Zāhir ḥi ruwāyāt* and *Tāturkhāneeyah*, cited in the *Futūwā i-Ālun-geerice*, the following circumstances are mentioned, as requisite to the enforcement of the law against a *Kitā ḥol turceek*, or highway robber. 1. That by himself, or with his associates, he have power and force sufficient to overcome any opposition from travellers, and to stop their passage; whether he be armed with a mortal weapon, or with a large staff, or with a stone; or any thing else. 2. That he commit the act charged, without, and at a distance from, any city. In the *Yunabee-ā* it is stated that, to constitute the crime of highway robbery, it must not take place between two cities, towns, or villages; and that there must be the distance of a journey, of three days and three nights, between the robbers and a city. But Aboo Yoosuf declared, that he would convict of highway robbery, though within the distance of a journey from a city, or even within a city, if it were a night robbery, committed on the highway. And *Futwās* are passed according to this opinion.* 3. That the crime be perpetrated within the limits of a *Mosulman* state. (*Dār-ḥol Islām*). 4. That all the conditions of the minor species of larceny (*Surikah i-foghrah*) be found in this species also; and that all the robbers be strangers to the party or parties robbed; as well as persons legally subject to punishment. 5. That the robbers be seized by the *Imām* before they repent; as well as prior to a restoration of property to the person robbed.

* The opinion of Aboo Yoosuf, as stated in the *Hudūd*, is, that "punishment is incurred by him who commits a robbery without the precincts of a city, although it be in the neighbourhood, because there no assistance can be had. And if robbers make an affray in a city, during the day, with mortal weapons; or during the night, either with mortal weapons, or with sticks and stones; they are to be accounted highway robbers; because mortal weapons are too quick in their effect to admit of assistance coming; and in the night assistance comes slowly." But it is objected by Aboo Huseefan and his followers, "that highway robbery signifies attacking passengers upon the highway; which does not apply to cities or inhabited places in their vicinity, because it is evident that in such places assistance may be procured." The robbers described are not therefore punishable under the law of *Hudūd* as highway robbers; though they may be imprisoned and corrected, and may be compelled to make restitution of any property plundered by them. Moreover, if they have slain any person they may be prosecuted by the heirs for *Kifār*. See Trans. of *Hid.* Vol. II, p. 137.

Four descriptions of robbers specified in the *Hidáyah*, with the penalties incurred by them respectively.

FOUR descriptions of highway robbers are specified in the *Hidáyah*, with the penalties incurred by each, upon conviction, according to their respective degrees of criminality. First, Those who are seized before they have robbed, or murdered any person, or put any person in fear. Secondly, Those who have committed robbery only; whether upon a *Mosulman*, or infidel subject.* Thirdly, Such as have perpetrated murder without robbery. Fourthly, Such as have committed both robbery and murder. Of these descriptions, the first are to be imprisoned, until by their appearance and demeanor they shew evident signs of contrition. The second are to suffer amputation of the right hand and left foot; provided the property taken be of such value, as, when divided amongst the whole of the robbers, amounts to ten *dirms* for each. The third class are to suffer punishment (*Hudd*) of death; and as it is inflicted by the right of God, for public example, (in opposition to the private right of *Kifás*) the forgiveness of the heir of the slain is of no avail. With respect to the fourth and last class, it is optional with the *Imám*, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation. He may also order them to be crucified.† It is further stated in the *Hidáyah*, that if a robber, in the predicament first mentioned, (viz. who may be seized before he has committed robbery, or murder) maim or wound a person or persons, there is no distinct specific penalty (under the provisions of *Hudd*) for the maiming or wounding; but he is liable to retaliation, or the fine of blood, under the rules of *Kifás* for offences short of life, at the demand of the person upon whom the

Further cases stated in the *Hidáyah*, of maiming, or wounding, by robbers.

* It is restricted to these because the property of an alien, not being under permanent protection, the law of *Hudd* does not extend to it.

† *Hid.* Vol. II. of Trans. p. 130. *IMÁM MOHUMMAD* restricts the option of the *Imám* to immediate death, or crucifixion: and does not admit its extension to amputation, in addition. See the argument on this point, as well as whether the crucifixion should be after, or before death, in Trans. of *Hid.* The stated penalties are also quoted from the *Káfee*, in the *F. A.* with the addition of *Támeer* to imprisonment, in the first case, of seizure before robbery.

offence has been committed. If the robber have both plundered and wounded, he is to suffer the penalty of amputation (as one of the second description of robbers); and neither fine or retaliation can be demanded for the personal injury; the public punishment, as with respect to property in cases of theft, superseding the enforcement of private satisfaction. In like manner, if a robber suffer death, in execution of a sentence of *Hudud*, nothing is due to the person robbed, beyond a restitution of the property forthcoming, as already stated with respect to theft.*

If any one among a gang of robbers commit murder, the whole are liable to the prescribed penalty; "because," says the author of the *Hidayah*, "the punishment is, in this instance, considered as a penalty for the assault of the whole; which is established by each of them being aiding and abetting to the others.† But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the person robbed, or murdered; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or if the property taken amount not in value to ten *durms* for each robber; or lastly, if the person robbed or murdered be not a Mosulman, or under the permanent protection of a MOHUMMUDAN Government; a sentence of *Hudd* is prevented, against any of the

The whole of a gang of robbers punishable for murder committed by any one of them.

Exceptions, in this and other cases, which bar a sentence of *Hudd*.

* *Hid.* Vol. II. of *Trans.* p. 133. And *Sarāj-i awbāh* quoted in *F. A.*

† *Trans.* of *Hid.* Vol. II. p. 133. And *Iktiyār*, quoted in *F. A.* The just principle stated is considered by some MOHUMMUDAN lawyers, on the authority of ABU YOUSUF's opinion before cited, to be applicable to all crimes committed by open violence, and by a number of persons assisting and supporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited; or in any other place whatever: but according to the prevalent doctrine, this provision of the Mosulman law cannot be applied to robberies committed in any other place, than on, or near, the highway; at a distance from any inhabited place. See Preamble to Reg. LIII, 1803.

party.* This sentence is also barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the *Korân*, concerning robbers, that “ the fixed penalty (*Hudd*) shall be inflicted upon them, excepting such as repent before the magistrate lays his hands upon them.” But the right of the individual, for private satisfaction, holds in this case; under the rules of *Kifās*; and the robbers are responsible for the property taken by them.† A robber delivering himself up, with the property, or the value of it, is not to be prosecuted for the stated punishment; nor is any penalty to be inflicted for an old offence, upon a person, who long before his trial, has ceased to rob, and follows an honest livelihood.‡

Third head of
criminal law,
Tazeer and
Seeâfut.
What offences
included in it.

IT remains only to speak of the third and last general head of MOHUMMUDAN criminal law, *Tâzeer* and *Seeâfut*; or discretionary correction, and punishment. It has been already observed, that this head includes all offences not expressly provided for by the laws of *Hudd* and *Kifās*; as well as the crimes to which specific penalties are attached by the general provisions of those laws, when the particular application of them may be prevented by some circumstance of exception, doubt, or legal defect. But offences of the first description, viz. those not comprized in the stated rules of *Hudd* and *Kifās*, are divisible into two distinct classes. 1. Petty offences of a private nature, or of inconsiderable public detriment, for which the offender is liable to chastisement, with a view chiefly

* The provisions for public punishment failing however, the right of private satisfaction is open to a prosecution for *Kyâs*. ABŌO YOUSUF is of opinion, that the rule stated with respect to infants and lunatics (which is founded on the doctrine of ABŌO HUNEEFAN and ZŌBÛRAN) should obtain only when the infant or lunatic is the actual perpetrator of the murder or robbery; not when the perpetrator is of mature age, and sound understanding, though there be an infant or lunatic in the party. The same difference of opinion prevails in cases of theft. See the argument at length in *Trans. of Hid.* Vol. II. p. 135. The exemption of a dumb person from punishment, on the ground of his not being able to plead in his defence, is stated in the *Mohbert*, as quoted in *F. A.*

† *Hid.* Vol. II. of *Trans.* p. 134.

‡ *Mohbert* and *Sirdjeyab*, quoted in *F. A.*

to his (or her) personal correction and amendment. 2. Heinous and flagrant crimes, of dangerous tendency, or extensive injury to society, for which the criminal is subject to capital or other exemplary punishment, with a view to deter others from the commission of the like offence. Cases of exception from the specific penalties of *Hudd* and *Kifās* are also subdivided in two classes. First, when the proof of such crimes having been committed by the accused may not be such as the law requires for a sentence of *Hudd* or *Kifās*, though sufficient to establish a strong presumption of guilt. Secondly, when the accused is legally convicted of the fact, but a judgment of *Kifās* is barred by a remission or compromise of the claim to retaliation; or such judgment, or a sentence of *Hudd*, is prevented by some incidental circumstance, which, as explained under the preceding heads, exempts the convict from the stated penalty, but leaves him subject to discretionary punishment. The two classes last mentioned however are not usually distinguished in the provisions for *Tāzeer*, and the distinction appears material only in considering the evidence requisite to support a conviction and sentence upon presumptive proof.

Tāzeer, which in its primitive sense means *prohibition*, or *restriction*, is legally defined to be "an infliction (*Ākoobut*) "undetermined by the law, on account of the right of God, "as well as for the rights of individuals;" or in other words, for the ends of public, as well as private, justice; and it is declared to be incurred by any offence, whether of word or deed, not subject to a specific legal penalty.* In the *Nihāyah*, one of the commentaries on the *Hidāyah*, and quoted

Definition of
Tāzeer,

* See the stated definition, (with verbal alterations) in 'Trans. of *Hid.* Vol. II, chap. entitled *Tāzeer*. It is however taken from the Persian version, not from the Arabic original, which begins with the example of "chastisement due for slandering a slave, or an infidel." Page 77 of English Trans. The Persian Translators appear to have given their introduction to the chapter in question, partly from the authorities cited by them, *TUMURTASHAN*, *SUWAKHAN* and *SHAFI'AN*; partly from the commentaries on the *Hidāyah*.

by the compiler of the *Futūwā-i-Ālūmgeeree*, *Tāzeer* is defined to be “ chastisement less than the penalties of *Hudd*, “ for offences not subject to *Hudd*.” But this restriction is applicable only to the first description of offences above noticed, those of a trivial nature; and, upon other legal authorities, is understood to have a special reference to *Tāzeer* by flagellation; which, in obedience to a tradition from the prophet, implying that “ the person who inflicts scourging to the extent “ of *Hudd*, in a case where *Hudd* is not prescribed, shall be “ deemed an aggravator,” is limited, according to ABŪ HUSNEEFĀH and IMĀM MOHUMMUD, to thirty-nine stripes; being one less than the lowest prescribed penalty; viz. that of forty stripes for slandering a slave.* The word *Siccufut*, which in its original sense denotes *protection*, is used, technically, to express exemplary punishment, such as the ruler, or his judiciary delegate, may deem expedient for the protection of the community from atrocious offenders, who commit the second class of crimes above defined; especially such as are habituated to the commission of such crimes; and whom there can be no hope of reclaiming from their evil courses by flag or temporary correction.† In such cases there is no limitation to the exercise of a second discretion; and in some instances it is expressly declared to extend to death.‡

end of *Siccufut*.

Order observed
in the following
remarks.

IN an attempt to illustrate the principles and rules of the discretionary correction and punishment sanctioned by the MOHUMMUDAN law, for offences not falling within its specific provisions, or excepted from them by special circumstances, it will be perspicuous to state, in the first instance, what

* ABŪ YOUSUF takes the smallest penalty, under the provisions of *Hudd*, for a freeman; which being eighty stripes, he deducts five, after the example of ĀLĪ, or according to another report, one only; and considers the residue, seventy-five, or seventy-nine, stripes, to be the limit of *Tāzeer*.—See Trans. of *Ilid*. Vol. II, p. 78.

† The stated meaning of *Siccufut* is expressly noticed in the *Buhr-i-rāyik*; and it corresponds with the common use of the term in the *Futūwā* given by the law officers of the *Nimānat Ālālut*.

‡ The *Tabeen*, *Mōnyab*, and *Mājūba* quoted in the *Buhr-i-rāyik*.

is applicable to *Tāzeer*, in its most extensive sense; and then to distinguish what is peculiar to the several descriptions of offences which are comprehended in it.

It has been already observed, under the head of justifiable homicide, that when an offence, liable to *Tāzeer*, has been actually committed, the magistrate only is authorized to punish the offender. In cases where the right of God, or public justice, is considered to prevail, the *Imam*, viz. the sovereign or his delegate, is exclusively competent to remit the punishment of the criminal; and even this competency is qualified by a condition of ascertained previous repentance.* In such cases, as in other public prosecutions, the evidence of the prosecutor is admissible; or the offender may be brought to trial, and punishment, without any complaint from the party injured. But when the right of the individual is deemed prevalent, his claim, or that of his representative, is requisite, as in other instances of private retribution: the claimant, though incompetent to bear testimony in his own cause, is at liberty to forgive the offence; for establishing which, moreover, secondary witnesses, viz. persons appointed by absent witnesses to give evidence for them, who are not admissible in any public prosecution, may be admitted; or, in defect of proof, the accused party may be put upon his oath†. With exception however to the authorized chastisement of a wife by her husband; of a child by the parent; and of a slave, male or female, by the owner; the *Tāzeer* allowed, as a private right, cannot be legally inflicted without a judicial sentence, or the award of an arbitrator‡. In all cases of offences against indi-

Several provisions relative to *Tāzeer* and *Sacafut*.

* *Futūh ul Kudeer* and *Nubi i fāyik* quoted in *F. A.*

† *Futūwā-ı-Kāzee Khān*, quoted in *F. A.*

‡ *Futūh ul Kudeer* quoted in *F. A.* See also *Trans. of H. V. L. II*, p. 77. though what is there given from the Persian version, respecting *Tāzeer* which every one is allowed to exercise for the prevention of a crime, at the time of an actual attempt to commit it; and that which is demandable for private injuries, by complaint to the magistrate, is not (as before noticed) in the *Arabic* original.

viduals, which incur *Tāzeer*, the penalty is equally incurred whether the injured party be a *Mosulmán*, or otherwise.* And though, for the full legal conviction of a *Mosulmán*, the evidence of witnesses of any other religious persuasion is not strictly admissible; nor of women, though of the faith of Islam, if the prosecution be of a public nature, (*ba huk-i-šó'lah*); yet *Tāzeer* and *Seeásut* may, in all cases, be inflicted by the *Imám*, upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a violent presumption of guilt; as well as upon the confession of the party accused; or the legal proof required in cases of *Hudd* and *Kifás*; and it is expressly declared, that a conviction for *Tāzeer* may be founded upon the depositions of the prosecutor, and one credible male witness, in public cases; or, in those of a private nature, upon the testimony of two men, or one man and two women; as in other instances wherein individual right only is at issue†. On conviction of offences subject to *Tāzeer*, which may not require capital or other exemplary punishment of the criminal as a warning to others, and in which therefore the reformation of the offender himself is the principal object, the *Kázee* is authorized to exercise a just discretion, according to the nature of the offence, and the rank and situation of the offender, in adjudging him to receive an admonition, such as may render him ashamed of his conduct; or a public reprimand, on personal arrest, and exposure at the door of the court; or imprisonment; or stripes, within the restriction before mentioned. Blows on the back of the neck, and pulling by the ears, are also legal modes of chastisement; and according to Aboo Yoosuf, the offender's property may be taken and kept in deposit till he shew signs of contrition; but is not to be finally levied as a fine to govern

* *Fut b ōl Kudet*, cited in *Bubr-i-ráyik*.

† *Bubr-i-ráyik*, quoted in 'Treatise on *Tāzeer* by KÁZEE NÚJIM ō-DEEN. Also the *Takreef Káfes*, and two *Moketels*, quoted in *F. A.*

ment; the taking away any *Mosulmán's* property, without legal cause, being expressly declared unlawful. Nor is even the temporary sequestration of property sanctioned by the law, in the opinion of ABOO HUNEEFAH and IMÁM MOHUMMUD.* *Tázeer* by reproach is declared lawful in the *Moojtuba*, but on one authority only, that of ABOOL EESEER; and under a restriction, that it be not slanderous†. Banishment (*Tughrceb*) is permitted, at the discretion of the *Kázee*, as has been already noticed in the case of whoredom‡. And *Tushheer*, or public exposure (with the face blackened) is expressly declared to be the punishment inflicted by ÔMUR upon a false witness, in addition to forty stripes; though ABOO HUNEEFAH, and his two disciples, differ in opinion, as to whether this should be considered a sentence of *Tázeer*, for personal correction; or of *Secáfut*, for exemplary punishment§.

In the *Humádecyah*, the following differences between *Hudd* and *Tázeer* are cited from the *Nisáb ööl Ihtisab*. 1. *Hudd* is fixed and specified; whereas *Tázeer* is left to the judgment of the *Imám*. 2. *Hudd* is prevented by the existence of any *Shóobhah*, (doubt, or legal defect); but *Tázeer* is executed notwithstanding such. 3. *Hudd* is not enforced upon a minor; but *Tázeer* is, in some cases; viz. in matters

Differences
between *Hudd*
Tázeer.

* *Niháyab* and *Futp ööl Kuleer* quoted in th: F A The passage of similar import, in the Trans. of *Hid*. Vol. II, p. 76, appears to have been introduced, by the authors of the Persian version, from the *Niháyab*. In the *Buhr-i-ráyk* an opinion is stated, that if the magistrate, after sequestering the property of the offender, see no hope of his amendment, he may order the forfeiture of it. And the *Shub ööl eífár* is cited in proof that, at the commencement of *Islám*, it was customary to take property in exaction of *Tázeer*, though the usage was afterwards discontinued. But the author of the *Buhr-i-ráyk* adds, that the doctrine, against the legality of *Tázeer* by a pecuniary exaction, is more authoritative. It appears however to have exclusive reference to *Mosulmán's*, and not to bar the levy of a fine, when considered the fittest penalty, from offenders of any other persuasion.

† *Buhr-i-ráyk*.

‡ Vide p: 290.—And Trans. of *Hid*. Vol. II, p. 17. The author of the *Buhr-i-ráyk* contends however that the proper construction of *Tughrceb* is imprisonment, which is a species of banishment from the world; and not exile from city or country, as understood by others.

§ See the argument; and the mode of stigmatizing a false witness by *Tushheer*, as prescribed by SHARÍF, *Kázees* of *Konfab*. Trans. of *Hid*. Vol. II, p. 715. 716.

he, author of the *Bubr-i ráyik*, as an example of the latter, quotes from the *Kāshyik*, that a boy giving abuse to a learned man, is liable to *Tāzeer*; minority in such cases being no obstacle to a just correction; but he adds, that for crimes of a public nature, such as whoredom, drunkenness, theft, and robbery, minors are equally exempted from *Tāzeer*, as from *Hudd*. He further remarks, that if a convicted offender be under sentence, at the same time, to suffer both *Hudd* and *Tāzeer*, the latter should be first inflicted, provided it be exclusively due in satisfaction for private injury: not as a punishment for the ends of public justice; in which case the stated penalty would be first for execution.

Specification of offences liable to *Tāzeer*, in the *F. Ailumgeeree*.

THE following offences are specified in the *Futūwā-i-Āilumgeeree*, as subject to *Tāzeer*; but are not distinguished as belonging to the first or second of the four classes enumerated; though many of them manifestly appertain to the former; and the degree of criminality, with reference to times and circumstances, as well as to the public detriment, or dangerous tendency, of the offence, and the evil disposition and bad habits of the offender, is the general criterion for determining what crimes are to be ranked in the second class:—

Abusive language.

1. Abusive language, (*Shutm* or *dōshinām*,) respecting which the author of the *Shurh-i-vikāyah* has given a general rule; whereby, he states, every case may be decided, to this effect. "When words of reproach do not amount to the legal crime of slander or whoredom, for which the specific punishment of *Hudd* is established, it must be considered whether they are liable to *Tāzeer* or not. If they impute a voluntary act, which is forbidden by the law, and also commonly judged disreputable, they incur *Tāzeer*; but not otherwise, unless the credit of persons of eminence be affected by them. The condition of a *voluntary* act excludes what is natural

natural and constitutional. Therefore if a person call another an ass, *Tâzeer* is not incurred; as the literal sense cannot be intended, and the metaphorical use of the term for a fool, or blockhead, refers to a natural defect. It is the same if the appellation of monkey be given, to denote deformity; or of dog, to express a bad disposition. But if these terms be applied to a respectable person, such as a learned man, a descendant from *ÂLEE*, or one of eminent virtue, *Tâzeer* is due for the injury done to such persons, by the application of disrespectful language to them. It is the reverse, if the party addressed be of low degree, as such language is common among persons of that description, and is not held of consequence. The qualification of the act imputed, ~~that~~ it be *undisreputable*, except voluntary acts which, though not forbidden by the law, are generally esteemed discreditable; as the profession of a barber; and such like professions of low estimation; to ascribe which therefore is not punishable by *Tâzeer*, unless the party addressed be of a rank to suffer from the imputation, as already explained. Lastly, the requisite, of the act imputed being *disreputable*, exempts from *Tâzeer* the allegation of an act which, though forbidden by the law, is not thought criminal or dishonorable in society: as the game of draughts, and other games; as well as the office of *Daccân* or financial minister, under a tyrant. Moreover, the degree of *Tâzeer* is committed to the judgment of the *Imam*. Let him therefore consider the nature of the offence, as small or great; and the condition of the speaker, as well as of the party addressed." It is further stated in the *Buhr-i rayk*, on the authority of IMÂM MOHAMMUD, that when a person is convicted of opprobrious language, if he be a gentleman (*Sahib-i morovat*) he should be admonished; if of low degree, he should be imprisoned; or if he have been guilty of gross or repeated abuse, both flogged and confined. It is added, that words of reproach are subject to *Tâzeer*, when the

speaker fails in proving them true; but not when the truth of them is established.*

Forgery-

2. Forgery of deeds or letters, with a fraudulent design.

Ridicule of the law, or pretended strictness for imposition.

3. Ridicule of the ordinances of the law, or affected sanctity and scrupulousness, beyond the provisions of the law, for purposes of imposition.

4. Cutting off the hair of female slaves; or the tails of cattle.

5. Compelling another to commit murder or whoredom.†

6. Bestiality ‡

Sodomy.

7. Sodomy.§

Lasciviousness.

8. Lasciviousness, with a strange woman, whether free or a slave.|| *

Enticing man's wife, or daughter, for marriage.

9. Enticing away the wife, or daughter, of another; and giving her in marriage to a third person.¶

Self pollution.

10. Self pollution.**

* It is explained that the proof must be of some specific act; or, according to the *Futūḥ al-Kāfir*, of notoriety.

† The 2d, 3d, 4th, and 5th instances, are quoted in the *F. A.* from the *Tāārkhāneryah*. They are also cited in the *Humādeeyah*.

‡ *Sarājeyah*, and *Jawāb-i-ṣṣayrah* quoted in *F. A.* In these the crime is specified, as between a man and quadruped; or between a woman and an ape. See also Trans. of *Hid.* Vol. II p. 27. In the *Shah-i-wakāyah* and *Babr-i-rāyik* the discretion of the *Kāzer*, in punishing, for determent, the offences of bestiality and sodomy, is stated to extend to death, by ordering the offender to be burnt, or thrown down from a high place, or by causing a wall to fall upon him. Scourging, or confining in a place of bad odour are also cited from the *Ilāvee* as authorized modes of punishment; which castration and excision are declared not to be.

§ *Futūwa-i-Kāzer Khān*; *Tubēn*; and *Huāyah*, Vol. II, of Trans. p. 26. *ABU YOUSUF* and *IMAM MOHAMMUD* maintain, that the crime of sodomy should incur the same specific punishment as whoredom, and one report of *SHAFI, IZZ'* opinion is to the same effect. Another is, that in pursuance of a tradition from the prophet, both parties should be put to death. But *ABU HUNEFAN* denies any resemblance of the crime to whoredom; and considers the tradition cited by *SHAFI, IZZ'* to relate to *Steāfuz*; when exemplary punishment may appear requisite. See Trans. of *Hid.* in which, however, unnatural copulation with a strange woman only is mentioned. Sodomy with a boy, described in the original as the *act of Lot*, is omitted. The perpetration of this unnatural crime, with a man's own wife, or female slave, is not specified in the *Huāyah*, but in the *Tubēn* it is, and declared liable to *Tāzzer*.

¶ *Fut. Kāzer Khān* and *Hidāyah*, Vol. II, of Trans. p. 26.

¶ *Futūwa-i-Kābīa*. *IMAM MOHAMMUD* declared, on this case, that he would keep the seducer in confinement for life; or till he should restore the woman enticed away by him.

** *Sirāj-i-nubhāj*, quoted in the *F. A.*

11. Being present at an assembly of wine drinkers, or of persons met to drink any thing resembling wine; though the person so present have not himself drank any prohibited liquor.

Being at an assembly of wine drinkers.

12. A Mosulman selling wine, or taking interest.*

Selling wine, or taking interest.

13. A man causing his minor son to drink wine.†

Causing an infant to drink wine.

14. A fixed resident knowingly breaking the fast of *Rum-zân*.‡

Breaking fast of *Rumzân*.

15. Giving a slap on the face, or striking off a Mosulman's turband in the bazar.§

Slapping the face, or striking off a turband.

16. Giving a blow with a flick, or other weapon, not dangerous to life.||

Giving a blow with a flick or other weapon.

It is further stated in the *Futâwâ* of KAZEE KUTAN, that persons against whom an imputation lies, of murdering, robbing, or assaulting people, may be kept in perpetual imprisonment, unless they evince contrition. But in qualification of this principle, the author of the *Buhr-i-fâyk* observes, that the imputation, to warrant imprisonment, should be supported by, at least, the testimony of one credible witness; or of two witnesses, whose credit may not have been ascertained. In the *Tutarkhâneeyah* it is stated, that disturbers of the peace, and persons who excite terror by their attempts against life, or property, may be confined till they repent. And in the *Humâdeeyah*, that persons who give intoxicating or stupifying drugs, for the purpose of theft, are liable to severe correction and imprison-

Other cases in which *Tazeer* may be inflicted.

* The 11th and 12th Examples are both cited in the *F. A.* from the *Nubr-i-Fâyk*. But in the case of interest, it must be understood, according to the opinion of ABOO HUNEEFAN and IMÂM MOHUMMUD, that the borrower is not an hostile infidel, in a foreign land. See *Trans. of Ind. Vol. II*, page 501. Public singing and mourning are added as incurring *Tazeer*, from the *Nubr-i-fâyk*, by KAZEE NUJIM-ÜD-DÛN.

† *Tutarkhâneeyah*, quoted in the *F. A.*

‡ Ditto. It is added that the offender may be imprisoned, after chastisement, if there be reason to suppose he will again break the fast.

§ Ditto.

|| *Buhr-i-fâyk* and *Nubr-i-fâyk*, quoted in the *F. A.* It is added, that if the party receiving the blow, return it, he is also liable to *Tazeer*. But this must not be construed to prohibit strict self-defence.

ment till they shew marks of repentance, and make compensation for the property stolen by them. In the work last mentioned it is also declared, on the authority of ABOO YOOSUR, that the persons above described may be dealt with, as the *Imám* shall judge proper; and that a strangler, confessing his crime, or detected with the usual implements of strangling, and stolen property, may be sentenced by the *Imám* to be beheaded and crucified. Likewise, that forcerers, proved to have done serious injury by their sorcery, may be put to death, or imprisoned, according to the circumstances of the case. And an instance is quoted from the *Moheet* to prove that death may be inflicted upon strong presumption without complete legal proof.*

Crimes, which, on proof, are liable to *Hudd*, or *Kífar*, whether also liable to *Tázeer*.

WITH respect to crimes which, on proof, are subject to the specific penalties of *Hudd* and *Kífar*, a difference of opinion has obtained among the learned, whether they are also liable to *Tázeer*, or not. Those who include such offences in the provisions for discretionary correction and punishment, consider these to extend to every unlawful act, which is injurious to the community, or to individuals; whereas those who maintain the opposite doctrine restrict *Tázeer* to acts for which no specific penalty is fixed by the law. The former construction is however preferred, and generally admitted; because the right of God, or principle of public justice, expressed or implied, attaches to every case of both *Hudd* and *Kífar*; and may be exercised at discretion, by the magistrate, if it appear expedient. This, it is argued, is clearly deducible from a passage in the *Hidáyah*, which vests the *Imám*, or *Kázee*, with a discretion of adding imprisonment, or banishment, to the specific penalty of flagellation in certain cases of whoredom, as

* In the *Abbáb ó Nuzáyir*, strong presumption (*Akburi-ráye*, or *Ghálíb-óo-xun*) on which legal judgments of conviction and condemnation are founded, is defined to be, a preponderating inclination of the mind, producing a conviction, which nearly approaches to certainty.

already noticed.* The author of the *Kifáyah* states the same principle to be equally applicable in all cases of *Hudd* and *Kifás*. *Tázeer* therefore may be inflicted in all instances, where *Kifás* or *Hudd* cannot be enforced; whether barred by some legal impediment; or in cases of *Kifás*, by the pardon or compromise of the heir of the slain, or by some of the heirs not attending to claim retaliation.† The following rule, for the guidance of the *Kázee* in adjudging *Tázeer*, is cited in the *Mohcet-i-Bóorhaneh*. "Let consideration be given to the nature of the offence which demands the infliction of *Tázeer*. If it be within the provisions of *Hudd*, but excepted from the enforcement of them, in the particular case, by some special circumstance, *Tázeer* by stripes (supposing this mode of correction to be applicable) should be inflicted to the utmost limit. (viz. thirty-nine.) For example, if a person call the female slave, or *óon i-wulud* of another, a whore, he should be chastised to the full extent of corrective *Tázeer*; because the offence is slander, and the offender is exempted from the stated punishment of *Hudd*, merely by the circumstance of the party slandered not being *Mohsin*‡. But if the offence be not subject to *Hudd*, as the calling another a sloven or libertine, the degree of flagellation, or other species of *Tázeer*, is left to the discretion of the *Imám*." The *Bubr-i-ráyik* also specifies three cases, in which *Tázeer*, by stripes, is to be inflicted to the full extent. First. For acts of lasciviousness with a strange woman, not amounting to the actual crime of whoredom. Secondly. When a thief is seized, after collecting property, but previously to removing it from the place of custody. Thirdly. For expressions which fall within the penalty of *Hudd* for slander; but are specially excepted from it by the condition of the person slandered; as when whoredom is imputed to a *Zimmee* or slave.

Rule cited in
the *Mohcet-i-
Bóorhaneh*.

Three cases, in
which *Tázeer*,
by stripes, is to
be inflicted to
the full extent.

* In Page 290, preceding; and in Trans. of *Hid.* Vpl. II. p. 17.

† Treatise on *Tázeer*, written by KÁZEER NUJM-ÖD-DIN.

‡ See the qualifications of *Ibfán* in preceding page 296.

The foregoing cases and rule do not apply to exemplary punishment for the ends of public justice, when a flagrant offender, convicted either on legal evidence or on strong grounds of presumption, may appear to merit a more adequate punishment than what he is subject to, under the ordinary provisions of the law. But except in cases of a heinous and special nature, which, in the judgment of the sovereign, or his delegate, may call for a severe example, the *Kázee* is restrained, by the tradition before noticed, from inflicting discretionary punishment, equal to the specific penalties, defined by the law.

How far the *Kázee* is restrained from inflicting discretionary punishment, equal to the specific penalties, defined by the law.

And in what cases the power of adjudging *Saddat* at discretion is to be exercised.

The foregoing cases and rule do not apply to exemplary punishment for the ends of public justice, when a flagrant offender, convicted either on legal evidence or on strong grounds of presumption, may appear to merit a more adequate punishment than what he is subject to, under the ordinary provisions of the law. But except in cases of a heinous and special nature, which, in the judgment of the sovereign, or his delegate, may call for a severe example, the *Kázee* is restrained, by the tradition before noticed, from inflicting discretionary punishment, equal to the specific penalties; and although in cases of *Saddat* there is no limitation to the exercise of a sound discretion, according to times and circumstances, the power of enhancing the specific penalties of the law, or of adjudging them without the legal proof required for the enforcement of them, or when they are not legally incurred under exceptions to the general rules of *Hudd* and *Kifás*, is to be exercised occasionally only, as public exigency may call for it; not constantly, and in the ordinary course of justice. This is stated and enlarged upon by MOULAVEE MOHUMMUD RÁSHID, at the conclusion of his dissertation on *Tázee*, in the following terms:—

Illustration from MOULAVEE MOHUMMUD RÁSHID'S Treatise on *Tázee*.

“ FROM the whole of the cases stated in this treatise, it is deducible that *Tázee*, with respect to the degrees of offences, is of four kinds. 1. For an offence subject to *Hudd*, but, though established by legal proof, exempted by some intervening circumstance from infliction of the prescribed penalty. As when a slanderous expression is used to a slave; or when a minor, or a relation to the person robbed, steals property sufficient to incur the penalty of theft. 2. For an offence liable to *Hudd*, but not legally proved as required for a sentence of the fixed penalty; though established by sufficient grounds of presumption to warrant a judgment of *Tázee*; as when testimony be given by two witnesses of uncertain credit, or one credible witness, to a charge of robbery. 3.

For

For an offence not subject to *Hudd*, nor liable to the extremity of *Tāzeer* by scourging, as when a person calls another a floven. 4. For an offence not subject to *Hudd*, but liable to the full extent of corrective *Tāzeer*, or to exemplary punishment equalling, or exceeding, the penalties of *Hudd*: as sodomy; and repeated flagitiousness, to the public detriment: In the three first cases, it is not legal to inflict *Tāzeer* to the extent of *Hudd*: as, otherwise, in the first and second, *Hudd* would be inflicted, when it is not legally due; and the tradition, forbidding such aggravation, would thereby be disobeyed. Moreover, in the third case, the punishment would exceed the crime. A further threefold division of *Tāzeer* may be made, with regard to the cases subject to it. 1. For trivial instances. 2. For such as are liable to the provisions of *Hudd*. 3. For heinous cases, in which exemplary punishment may be inflicted, extending to death. In giving judgment upon charges of the first description, the *Kāzee* ought not to inflict *Tāzeer*, equal to the full extent of the limited number of stripes, viz. thirty-nine. In those of the second class, he should not pass sentence for the stated penalties of *Hudd*. But with respect to the third description, corresponding with the fourth class in the first division, he may act to the best of his judgment. In cases of *Kifās*, however, if retaliation be prevented by the forgiveness, or compromise, of the heirs of the slain, or by any other cause affecting the sentence, after legal proof; let him not inflict *Tāzeer*, which is the right of God, equal to *Kifās*, which is the right of the individual, and outweighs the former in the instances subject to retaliation. Discretionary correction, upon strong presumption of guilt, is indeed left to the judgment of the *Kāzee*, in all the instances specified; but, excepting those mentioned in the final class of each division, wherein exemplary punishment, extending to death, is sanctioned, it is not meant that the *Kāzee* should, at his discretion, adjudge *Tāzeer* equal to the fixed penalties of *Hudd*. Nor, when a criminal, within the two classes referred to,

is, in the just exercise of the *Kázee's* discretionary power, sentenced to suffer death, for the sake of example to others, should it be a sentence of *Hudd*. For instance, a person convicted of sodomy should not suffer lapidation, which is the stated punishment for whoredom: nor should a man, punishable for general misconduct, suffer amputation, which is the penalty for particular offences. If any one contend that the well-known tradition, "Whoever inflicts *Hudd*, where *Hudd* is not due, is an oppressor," applies to trivial offences only, not within the provisions of *Hudd*, as might be inferred from the literal sense of the words; I answer, that the evident meaning of the tradition is more comprehensive, and includes, besides offences not subject to the penalties of *Hudd*, cases in which those penalties cannot be legally adjudged, on account of some circumstance of prevention. The *Tázeeer* of offences not punishable by *Hudd* is therefore of three kinds. First. For trivial offences, which, though established by legal proof, are not subject to any specific penalty. Secondly. For offences subject to *Hudd*, but, though legally proved, excepted by some incidental circumstance, from a judgment for the stated penalty. Thirdly. For offences liable to *Hudd* on legal proof; but the evidence of which is defective. The whole of these descriptions of *Tázeeer* are within the restriction of the tradition cited. From the definition given of *Seeáfut*, or exemplary punishment for the protection of the community, it is manifestly intended to be occasionally inflicted by the *Imám*, when it may appear expedient: not to be constantly adjudged. This is inferrible from the special nature of *Seeáfut*, as applicable to particular cases; and not being founded on any express authority from the law giver, to enforce it, at all times, without necessity, would be objectionable."

Translation of
two *Faráide*
given by the
law officers of
the *Nimánee*
Adalat.

In verification of what has been stated in this summary of the Mohummudan criminal law, it may not be improper to conclude it with the following translation of two *Futwás* delivered,

livered, in the years 1794 and 1799, by the *Kázee ól Kóózáí*, and other law officers of the court of *Nizámut Ádalut*, in answer to questions from that court, relative to the provisions of the law of *Islám* for *Tázeer*; and punishment in cases of *Shóóbhah*.

“*Tázeerát*, or the penalties of *Tázeer*, which are less than those of *Hudd*, and the extent of which is not defined by the law, but left to the judgment of the *Kázee* and sovereign, are of two kinds: one of a private nature, being in satisfaction of individual rights; the other public, and considered to be the right of God, for the protection of his creatures. That which attaches to individual right may be excused by the person to whom the right appertains. That which is the right of God is enforceable by the sovereign and his delegates. But if the sovereign know that the offender has repented of his crime previously to the infliction of *Tázeer*, he is authorized to remit it. In cases of a public nature the charge of a prosecutor is not essential; and the person preferring a charge may be admitted as a witness, with another, to prove it. *Tázeer* is incurred by any unlawful and injurious act; or, more strictly, by any forbidden action, for which no determinate legal penalty is due. In the retribution for illegal homicide, although individual right is predominant, yet the right of God likewise attaches, for the preservation of the lives of mankind. What is written in law-books, that *Kifás*, or retaliation, is a private right, means only that the exaction of blood for blood, or limb for limb, under the legal provisions of *Kifás*, may be claimed as the right of the parties declared entitled thereto. But when *Kifás* is prevented by any circumstance of exemption, if the magistrate, for the time being, judge it expedient, he may enforce the public right, by inflicting *Tázeer*, less than the specific penalty fixed by the law. This is clearly stated in the *Buhr-i-ráyik* and other books of authority*. If, therefore,

Presented and delivered in 1794.

* A quotation from the *Buhr-i-ráyik*, which has been already cited, is here introduced. It

fore, retaliation of death cannot be adjudged against a murderer, from the want of two credible witnesses, to establish a legal conviction; but a presumption of his guilt arises from the testimony of one credible witness, or of too witnesses of uncertain credit, he may be legally subjected to *Tázeer* of imprisonment. It is further stated in the *Futáwá-i-Áálumgeeree*, that if a master kill his slave, the magistrate may inflict *Tázeer* upon him: whence it appears, that the murderer being exempt from a sentence of *Kifus* or *Diyat*, from his being the master of the slain, is subject to discretionary punishment."

*Frisson delivered
ed in 1.02*

"THE legal penalties of *Hoolood* and *Kifus* are barred from adjudication by a slight doubt of the crime having been committed; as well as by any circumstance of exception from the general rules, such as the relationship between a father and son, when the former murders the latter; or one of a band of robbers being a minor or lunatic. But the discretionary punishment of *Tázeer* may be inflicted, if the magistrate judge it proper, notwithstanding the existence of a legal defect in the case. There are three degrees of imperfect evidence. The first produces *Shuk*, or uncertainty whether the charge be true or false. The second establishes *Zun*, or presumption that the accusation is true. The third excites *Wuhm*, or doubt against the truth and probability of the fact alleged.* The degree of *Zun* is admitted to be a ground of legal conviction and sentence, provided the mind receives a strong impression and assurance from it; in which case it is denominated *Akbur-i-rá'ee* and *Zun-i-ghálib*. This degree of violent presumption amounts nearly to certainty; and is fully described, as such, in the *Ashbábó Nuzáýir*. The sum therefore of what

It implies only that a person against whom there may be a presumptive imputation of murder, robbery, or assault, though insufficient for his legal conviction and punishment, may be kept in confinement, till he evince repentance.

* This is the order of the original: though, according to the degrees of evidence stated, or the gradations of doubt, uncertainty, and belief, arising therefrom, that of *Wuhm* should rather have commenced, than concluded, the series.

has been mentioned upon imperfect evidence, is, that a penal sentence may be founded upon it, when, in the judgment of the magistrate, it affords strong ground of presumption that the crime charged has been committed by the party accused. In the *Buhr-i-ráyik* it is related, from the jurist ABOO BUKR AAMUSH, that when a person accused of theft denies the charge, the magistrate may act to the best of his judgment upon the case. If he be impressed with a strong conviction that the prisoner has committed the theft; and has the stolen property in his possession; he may inflict discretionary punishment. In the *Moheet* it is declared that the shedding of blood upon violent presumption is authorized. And a similar declaration is contained in the *Buhr-i-ráyik*, that it is held lawful to take away life upon strong presumptive proof. Thus if a man enter the house of another with a drawn sword, and the owner of the house entertain a firm belief that the other is come to kill him, he may put the stranger to death. Strong presumption is sometimes produced by the circumstances of the case, without the testimony of witnesses. It is accordingly noticed by the author of the *Buhr-i-ráyik*, that in like manner as a charge is proved by witnesses, or by the confession of the accused; so it is also established by convincing circumstances. Thus if a man come out of a house with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the house find a person whose throat has been recently cut; the blood dropping from it; and there be no other man in the house; these circumstances warrant a strong presumption that the man described is the murderer. A mere possibility of the person in question having cut his own throat, or that another may have cut his throat and escaped over the wall, is too remote from probability to be relied upon. Strong presumption is likewise, at times, found in the testimony of witnesses, not amounting to legal proof; in which case *Tázeer* may be inflicted, though *Hudd* and *Kifás* are prevented. Thus KÁZER KHÁN says—"An imputed murderer, robber,

robber, or assailant, may be imprisoned, till he shew contrition. Upon which the author of the *Buhr-i-ráyi*k observes, that the imputation (*Ittiham*) should rest upon the evidence, either of two witnesses of unascertained credit, or of one credible witness. Upon such evidence therefore, though legally defective, if it produce a violent presumption that the accused is guilty of the crime alleged against him, *Tázeer* by imprisonment may be adjudged. But, on the contrary, if only a single witness of uncertain credit, or a known reprobate, have given testimony, the magistrate is not authorized to imprison the accused upon evidence of so doubtful a nature."

Supplementary
observation on
the special pro-
visions of *Tázeer*
for *Bugháwut*,
or rebellion.

It has been observed, in the note to a preceding page,* that the provisions of the Mohummudan law concerning rebels are more properly applicable to religious insurgents; being intended for *Mosulmans*, who rise, in arms and force, against their rightful *Imám*, of the same persuasion, under some plea of a legal objection to his authority. The law respecting such is fully stated in the *Hidayah*,† and the authors of the Persian version of that work have introduced the chapter respecting *Bágheeán*, or rebels, with a discrimination (taken from the *Futh-ool-kudeer*, and other authorities) of the several descriptions of persons who resist the authority of the rightful *Imám*,‡ as well as with a definition of the *Imám* so entitled; viz. a person

* Page 248.

† See Trans Vol. II, page 247. It is declared incumbent on the *Imám* to enjoin the rebel rebels to their allegiance, and shew them what is right, in such manner that the cause which occasioned their defection may be removed; because *Allah* thus directed himself towards the people of *Makkah*, who rebelled. When levying troops, or in actual force and insurrection, they may be opposed; and if taken prisoners, may be confined till they repent; but the whole of the provisions against *Bugháwut*, or rebellion, view it rather as a religious, than a civil offence; and aim at prevention, or suppression, of the actual insurrection only; without providing, by exemplary punishment, against the recurrence of similar attempts.

‡ Four descriptions are specified, viz.—I. Those who withhold their obedience from the *Imám*, without any plea of right, whether they are in force or not; and who rob and murder *Mosulmans*; and put travellers in fear. These are called *Koosd-ool-tureek*, or high-way robbers; the law respecting whom has been already stated. II. Those who, without force, rob and

person in whom all the conditions of *Imāmut* are united; such as *Islām*, freedom, sanity of intellect, and maturity of age; who has been elected by a tribe of *Mosulmans*, assenting to his holding the office; who desires to advance the faith of *Islām*, and to strengthen the *Mosulman* community; under whom *Mosulmans* enjoy security of person and property, as well as protection of their women; who levies the established tithe and tribute according to law; who, out of the public treasury, pays what is due to learned men, preachers, judges, and expounders of the law, lecturers and teachers, reciters of the Korán, and others; and who, in every respect, maintains the rights of *Mosulmans*. It is added that "whoever does not answer this description is not a *rightful Imām*; wherefore it is not incumbent to support him; but, on the contrary, it is a duty to oppose him; and make war upon him, till he adopt a right course, or be slain."* Were the definition thus given of an *Imām*

murder *Mosulmans*, and put travellers in fear; but act on some pretext of justification. These also are subject to the same legal penalties, as the robbers abovementioned. III. Those who assemble in a large body, and possessing the means of open resistance, withdraw from their obedience to the *Imām*, on a plea which induces them to believe his title to the office invalid, and to justify war against him; whether such plea be founded on his tyranny or infidelity. These are termed *Khārijees*. They hold it lawful to kill *Mosulmans*, seize their property, and enslave their women. They likewise question the faith of the companions of the Prophet. The law concerning them, according to the unanimous opinion of Lawyers and Traditionists, is the same as the law against Rebels. IV. A party of *Mosulmans*, who, in like manner, withdraw themselves from obedience to the rightful *Imām*; but do not hold it lawful to kill *Mosulmans*, seize their property, and enslave their women, as the *Khārijees* do. Persons who come within the fourth description are called *Boghāt*; plural of *Bāḡhee*, and derived from the word *Baḡhee*, which, in its original sense, means exaction, injustice, and opposition to right; and in the language of the law, is particularly applied to denote wrongful and illegal disobedience to the rightful *Imām*. It is so stated in the *Futū ṣūl kudsir*."

* This is quoted in the Persian version of the *Hidāyah*, from the *Mādu ṣūl hukūyik*, where it is stated to be copied from the *Furūyid*. The same definition of a *Boghāt Imām*, and sanction to oppose a person who does not come within it, are cited in the *Hamāderyab*, copied from the *Khuṣṣant ṣūl dirāyah*, on the *Furūyid*; or advantages of the *Hidāyah*, as cited in the same work, (the *Hamāderyab*) from the *Kunū-ṣ-dukūyik*, that the rebel (*Boghāt*) is one who withdraws from obedience to the rightful *Imām*, on a presumption that he is justified in so doing, and that the *Imām* has not a just title; although the ground of such presumption is erroneous. If he act without a pretext of this nature, he is subject to the ordinance against robbers." Also from the *Tubkeek*, that "*Boghāt* (rebels) are a party of *Mosulmans*, who rise against a just *Imām*, and refuse submission to the authority of his officers, on a plea of right. If they have not such plea, the law respecting them is the same as concerning robbers and high-way men."

ba huk, or legitimate sovereign, and the right of opposing any other in the exercise of supreme authority, to be strictly maintained within the territorial possessions of the East India Company, it would be a question for serious consideration, whether the provisions of the Mohummudan law, concerning *bughâwut*, or rebellion, should be allowed to have any operation under the British Government; and the necessity of a new law, to supply the defects of the Mohummudan law, in the definition and punishment of crimes against the state, would be obvious.* But in the *Buhr-i-râyik*, it is stated that "by an *Imâm*, is intended the *Sooltân*, or his *deputy*, (*Nâyib*;) and, in the *Futâwâ* of KÂZEE KHÂN it is copied from the *Siyur*, as the opinion of the learned, that a *Sooltân* derives his authority from two sources; one, election, namely the choice of a number of respectable *Mosulmans*; the other, exercise of power over his subjects, so as to hold them in awe and fear of his government; without which, election is not sufficient to establish sovereignty." It has been already observed that the
British

* The expediency of a regulation for the purpose mentioned was suggested to the Governor General in Council, in the year 1801, by the *Fatâwâs* of the law officers, upon the trials held in the preceding year, of the NUWÂN SHUMS Ô' DOULAH, and MEERZA JÂN 'UPISH. The former was convicted of "attempts to enter into league with the Sovereigns of other countries, for the purpose of subverting the British Government in Bengal; of endeavouring to connect himself with the Zemindars of Bahar, with a design of exciting an internal commotion; and of keeping up a treasonable correspondence." The latter was convicted of the charge of treason preferred against him, "In being joined in the Councils of SHUMS Ô' DOULAH; in instigating the sending petitions and letters to SOULTAN ZUMÂN SHÂN and his ministers of state; in representing as a great advantage, to SHUMS Ô' DOULAH, the collusion of the Zemindars of Soobah *Azermâbad*, on the strength of a *Mokhtárnâmâh* (written power) from them, which was a mere forgery, and without foundation." Yet in both cases the prisoners were declared by the *Fatâwâs* of the law officers, of the special court who tried them, and of the *Shikâr*, liable only to "imprisonment, until they should shew signs of repentance, to the satisfaction of the ruling power;" and the sentence accordingly passed upon each of them by the *Nizâm-Ad-dîn* was "to be imprisoned until the Governor General in Council shall be satisfied with the sincerity of his repentance." Upon the exposition of the Mohummudan law which governed this sentence, the Governor General in Council (in a letter to the *Nizâm-Ad-dîn*, dated the 9th July 1801,) observed, that "the principle, on which this interpretation of the law is founded, appears to be, that the invasion of foreign powers, whom the criminals had solicited to attack the British possessions, and the plans of the same criminals for exciting internal insurrection in those possessions, had not been actually carried into effect. Under the native administration, this defect in the law would probably have

British Dominions in India are considered to form part of a *Mofulman* Empire, from the nominal acknowledgment of the King of *Dehly*, in whose name the coin is struck, as well as from the administration of *Mofulman* law and the appointment of *Kázees* in execution of it. On these accounts, and perhaps, since the happy termination of the late *Marhatta* war, on the substantial ground of the protection afforded by the British arms to the unfortunate representative of the House of *Tymoor*, the territory of the East India Company is considered to be *Dár-óol Islám*, and the Mohummudan law officers, under that consideration, have, in several *Fulwás*, upon trials for treason and insurrection against the established government, held the provisions for *Bugháwut* to be applicable. They have indeed rather erred, in straining the application of them to cases for which they were not intended; and as they do not authorize more than imprisonment, except during actual resistance, or for the purpose of quelling an open rebellion, (when prisoners and fugitives may be put to death, if it appear necessary) the convicts have been declared liable to less punishment, under the special rules of *Tázeer* for *Bugháwut*, than might have been inflicted, at the discretion of the ruling power, and its judiciary delegates, on the general principles of *Seeáfut*.*

It

have been supplied by the exercise of that arbitrary power uniformly assumed in such cases by the Mahomedan Government. But as the British Government has wisely and honorably precluded itself from the exercise of such power, and has bound itself to administer justice according to the Mahomedan Law, until that Law shall be expressly altered, it is evident that the British Power in India must be continually exposed to the most serious danger, unless this obvious defect of the Mahomedan Law, with regard to the punishment of crimes committed against the state, be corrected." His Excellency in Council accordingly desired, "that the Court would be pleased to prepare for his consideration a draught of a Regulation, framed with a view to the object above stated; conforming as far as local circumstances might admit, to the principles of the English Law, with regard to the crime of Treason, both in the definition of the crime, and in the punishment to be inflicted on persons who shall be convicted of it." The draught of "a Regulation to supply the defects of the Mahomedan Law, in the definition and punishment of crimes against the state," was, in pursuance of the above, submitted by the Court of *Nizám* *Adálat* to the Governor General in Council, on the 12th October 1803; and is still under the consideration of Government.

* The cases of *SHUWÁH IDRIS KHÁN* and *MERRZA JÁN TURÁN* have been mentioned in a former note. The persons who were brought to trial, for having been concerned with *VIZIR*

ÁLÍ,

It will be sufficient to add, in this place, that the law of *Bugbawut*, being intended for *Mosulman* insurgents, is not applicable to *Zimmees*, or infidel subjects, unless they act in subordination to a *Mosulman* rebel, as his soldiers, or co-adjutors. This is expressly stated in the *Fut'h-ool-kudeer*, as follows. " If a party of *Zimmees* seize a place, and prepare for war, they are enemies (*Ahl-i-hurb*) not rebels. But if rebels (*Ahl-i-bughee*) apply for assistance to *Zimmees*, and the latter consequently aid the former in war, the allegiance of the infidel subjects is not destroyed thereby: in like manner as the junction of a party of rebels (*Mosulmans*) to support *Zimmees* in battle, is not destructive of their faith: and they are subject only to the punishment of rebellion. If however a *Zimnee* subject serve an army of hostile infidels as a spy, he is liable to be put to death; as by such service he is joined with them in actual hostility."

ÂLER, in his conspiracy against the Government, which took place at *Benares* in January 1799, being also charged as accomplices with him in the murder of Mr. CHERRY, and in other murders and acts of violence, MEEZA BÊG, and others, convicted of having accompanied VIZIER ÂLER, in a raid, to Mr. CHERRY's house, on the day of the massacre, were declared " liable to *Tâzeer*, at the discretion of the ruler of the country;" and MEEZA BÊG, who appeared to have taken an active part in the massacre, was sentenced by the *Nizâmut Âdâlut*, on the 5th August 1799, to suffer death. BÂBOO JUGUT SING'H, convicted of " having been concerned in VIZIER ÂLER's conspiracy against the Government, and of " writing letters and sending messages to JUGUNÂTH SING'H (an outlawed rebel) for the " purpose of assembling troops," being declared by the *Fatwâ* of the law officers " liable to severe punishment at the discretion of the ruler of the country," was also considered by the *Nizâmut Âdâlut* deserving of death; but being a Brahmin, and consequently exempted from capital punishment, by Section XXIII, Regulation XVI, 1795, for the province of *Benares*, whereby it is enacted that " no Brahmin shall be punished with death; in cases in which a Brahmin shall be declared by the law liable to suffer death, he shall, in lieu of such punishment, be subject to be sentenced by the *Nizâmut Âdâlut* to transportation;" that Court on the 23d July 1799, sentenced the Prisoner to be transported for life.

SECTION II.

*MODIFICATIONS OF, AND ADDITIONS TO, THE
MOHUMMUDAN CRIMINAL LAW, ENACT-
ED BY THE REGULATIONS OF THE
BRITISH GOVERNMENT.*

TO some, who peruse the foregoing statement of the Mohummudan Criminal law, its provisions may appear so ill calculated for the ends of public justice, as to suggest the expediency of their total abrogation; and of substituting for them a new code of laws, founded on those of England, or of some other country, where the principles of legislation and good government are better known, both in theory and practice, than they could be to the people who, nearly twelve centuries ago, became subject to the arms, religion, and policy of MOHUMMUD; or to those who have been since forced to acknowledge the arbitrary sway of his successors. Such, undoubtedly, would have been the opinion of a revolutionary French Government, had it been the fate of the Natives of India to receive a system of internal administration from France in the year 1793; the year in which Louis the XVI. was beheaded, and the state declared a republic. But such were not the sentiments of those who framed the Laws and Regulations comprised in the Bengal Code of 1793. It is the remark of

Reflections upon the statement of the Mohummudan criminal law, contained in the preceding section.

And upon the sentiments and principles which appear to have influenced the British Government in its administration

of the Moium-
Indian law.

As well as ge-
nerally in the
introduction of
the system of
law, and inter-
nal administra-
tion, now estab-
lished.

Quotation from
Mr. Burke's re-
flections on the
French Revolution.

an eminent writer upon legislation;*—That “a true politician always considers how he shall make the most of the existing materials of his country. A disposition to preserve, and an ability to improve, taken together, would,” he says, “be my standard of a statesman.” And, in another place, after pointing out the fatal consequences to be expected from the arbitrary proceedings of the French national assembly, who, to evade difficulties in remedying the errors and defects of old establishments, commenced their schemes of reform with abolition and destruction, he adds the following just observations; which are here quoted at length, as appearing apposite to the introduction of the system of law and internal government, now so happily established within the territory of the East India Company, subject to the immediate authority of the Government of Fort William; and gradually extending itself to the whole of the Company’s possessions, under the Presidencies of Fort St. George and Bombay. “At once to preserve and to reform is quite another thing. When the useful parts of an old establishment are kept, and what is superadded is to be fitted to what is retained, a vigorous mind, steady persevering attention, various powers of comparison and combination, and the resources of an understanding fruitful in expedients, are to be exercised; they are to be exercised in a continued conflict with the combined force of opposite vices; with the obstinacy that rejects all improvement, and the levity that is fatigued and disgusted with every thing of which it is in possession. But you may object.—“A process of this kind is slow. It is not fit for an assembly, which glories in performing in a few months the works of ages.” Such a mode of reforming, possibly, might take up many “years.” Without question it might; and it ought. It is one of the excellencies of a method in which time is amongst the assistants, that its operation is slow, and in

* Mr. Burke, in his reflections on the French Revolution.

some cases almost unperceptible. If circumspection and caution are a part of wisdom, when we work only upon inanimate matter; surely they become a part of duty too, when the subject of our demolition and construction is not brick and timber, but sentient beings, by the sudden alteration of whose state, condition, and habits, multitudes may be rendered miserable. But it seems as if it were the prevalent opinion in Paris, that an unfeeling heart, and an undoubting confidence, are the sole qualifications for a perfect legislator. Far different are my ideas of that high office. The true law-giver ought to have an heart full of sensibility. He ought to love and respect his kind, and to fear himself. It may be allowed to his temperament to catch his ultimate object with an intuitive glance; but his movements towards it ought to be deliberate. Political arrangement, as it is a work for social ends, is to be only wrought by social means. There mind must conspire with mind. Time is required to produce that union of minds which alone can produce all the good we aim at. Our patience will atchieve more than our force. If I might venture to appeal to what is so much out of fashion in Paris, I mean to experience, I should tell you, that in my course I have known, and, according to my measure, have co-operated with, great men; and I have never yet seen any plan which has not been mended by the observations of those who were much inferior in understanding to the person who took the lead in the business. By a slow, but well sustained progress, the effect of each step is watched; the good or ill success of the first gives light to us in the second; and so, from light to light, we are conducted with safety through the whole series.* We see that the parts of the system do not clash. The evils latent in the most promising contrivances are provided for as they arise. One advantage is as little as possible sacrificed to another. We compensate, we reconcile, we balance. We are enabled to unite into a consistent whole the various anomalies and contending principles

ciples that are found in the minds and affairs of men. From hence arises, not an excellence in simplicity, but one far superior, an excellence in composition. Where the great interests of mankind are concerned, through a long succession of generations, that succession ought to be admitted into some share in the councils which are so deeply to affect them. If justice requires this, the work itself requires the aid of more minds than one age can furnish. It is from this view of things that the best legislators have been often satisfied with the establishment of some sure, solid, and ruling principle in government; a power like that which some of the philosophers have called a plastic nature; and having fixed the principle, they have left it afterwards to its own operation."

How far the views and principles stated appear to have influenced the attempts of the British Government in India, to improve the laws it found in force; especially for the administration of criminal justice.

THE views and principles thus stated appear to have influenced the British Government in India, throughout all its attempts to improve the laws which it found in force at the periods of its territorial acquisitions; particularly its endeavours to render the administration of criminal justice more adequate to the due attainment of the important objects intended by it.

Instead of abrogating the Mohunmudan criminal law, which, however defective, had been long in force, and was therefore known to the people; the administration of criminal justice was, for some years after the Company's acquisition of the *Deewany* grant, left, as formerly, to the *Nazim*; and the influence only of the Company's Servants was exerted to remedy the deficiencies of the law, or promote the due execution of it, as appeared requisite in the cases that occurred.

By the judicial regulations which were proposed by the Committee of circuit on the 15th August 1772, and adopted by the President and Council on the 21st of that Month, a court of criminal judicature was established in each district, under the denomination of *Phoujdarree Adawlut*, in which a *Kázee* and *Mooftee*, with the assistance of two *Moulavees*, as expounders of the law, were appointed to try persons charged

with

with crimes and misdemeanors; and it was also declared to be the duty of the collector of the district, “ to attend to the “ proceedings of this court, so far as to see that all necessary “ evidences are summoned and examined; that due weight is “ allowed to their testimony; and that the decision passed is “ fair and impartial, according to the proofs exhibited in the “ course of the trial; and that no causes be heard or determined but in the open court regularly assembled.” A superior court of criminal jurisdiction was, at the same time, established at Moorshedabad, (then considered the capital,) under the designation of *Nizamut Sudder Adawlut*, in which was to preside a chief officer, having the title of *Daróghah*, on the part of the *Názim*, assisted by the chief *Kázee*, the chief *Mooftee*, and three capable *Moulavees*; whose duty it was declared to be, “ to revise all the proceedings of the *Phoujdarree Adawlut*; and “ in capital cases, by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the “ sentence for the warrant of the *Názim*.” A control over the proceedings of this court, similar to that vested in the collectors of districts over the *Phoujdarree Adawluts*, was lodged in the chief and council at Moorshedabad; and the object of such control was stated to be “ that the Company’s administration, “ in character of King’s Dewan, may be satisfied, that the decrees of justice, on which both the welfare and safety of the “ country so materially depend, are not injured or perverted “ by the effects of partiality or corruption.” But the only alteration in, or rather addition to, the provisions of the Mohammudan criminal law, made by these primary regulations of the British Government, was contained in the 35th Article; to the following effect. “ That, whereas the peace of this country hath, for some years past, been greatly disturbed by bands of decoits, who not only infest the high roads, but often plunder whole villages, burning the houses, and murdering the inhabitants; and whereas these abandoned out-laws have hitherto found means to elude every attempt, which the vi-

Addition to the provisions of the Mohammudan criminal law, made by those regulations, relative to decoits, or gang-robbers.

gience of government hath put in force, for detecting and bringing such atrocious criminals to justice, by the secrecy of their haunts, and the wild state of the districts, which are most subject to their incursions; it becomes the indispensable duty of government to try the most rigorous means; since experience has proved every lenient and ordinary remedy to be ineffectual. That it be therefore resolved, that every such criminal, on conviction, shall be carried to the village to which he belongs; and be there executed, for a terror and example to others; and for the further prevention of such abominable practices, that the village, of which he is an inhabitant, shall be fined, according to the enormity of the crime; and each inhabitant according to his subsistence; and that the family of the criminal shall become the slaves of the state; and be disposed of, for the general benefit and convenience of the people, according to the discretion of the Government." The grounds upon which the above severe rule was suggested by the committee of circuit, are stated in the following extract from their letter to the President and Council, dated 15th August 1772. "We have judged it necessary to add to the regulations, with respect to the Courts of Phoujdarry, a proposal for the suppression and extirpation of decoits, which will appear to be dictated by a spirit of rigour and violence, very different from the caution and lenity of our other propositions; as it in some respects involves the innocent with the guilty. We wish a milder expedient could be suggested; but we much fear that this evil has acquired a great degree of its strength, from the tenderness and moderation which our Government has exercised towards these banditti, since it has interfered in the internal protection of the provinces. We confess that the means which we propose can in no wise be reconcileable to the spirit of our own constitution: but until that of Bengal shall attain the same perfection, no conclusion can be drawn from the English law, that can be properly applied to the manners or state of this country.

Grounds upon which the rule stated was suggested by the Committee of Circuit.

country. The decoits of Bengal are not, like the robbers in England, individuals driven to such desperate courses by sudden want: they are robbers by profession, and even by birth; they are formed into regular communities, and their families subsist by the spoils which they bring home to them; they are all, therefore, alike, criminal wretches, who have placed themselves in a state of declared war with our Government, and are therefore wholly excluded from every benefit of its laws. We have many instances of their meeting death with the greatest insensibility; it loses therefore its effect as an example: but when executed in all the forms and terrors of law, in the midst of the neighbours and relations of the criminal; when these are treated as accessaries to his guilt, and his family deprived of their liberty, and separated for ever from each other; every passion, which before served as an incentive to guilt, now becomes subservient to the purposes of society, by turning them from a vocation, in which all they hold dear, besides life, becomes forfeited by their conviction: at the same time, their families, instead of being lost to the community, are made useful members of it, by being adopted into those of the more civilized inhabitants. The ideas of slavery, borrowed from our American colonies, will make every modification of it appear, in the eyes of our countrymen in England, a horrible evil. But it is far otherwise in this country: here slaves are treated as the children of the families to which they belong; and often acquire a much happier state, by their slavery, than they could have hoped for by the enjoyment of their liberty; so that, in effect, the apparent rigour, thus exercised on the children of convicted robbers, will be no more than a change of condition, by which they will be no sufferers; though it will operate as a warning on others; and is the only means, which we can imagine, capable of dissipating these desperate and abandoned societies, which subsist on the distress of the general community."

Remarks upon
the stated pe-
nalties for gang-
robbery.

It seemed proper to exhibit at length the reasons which influenced legal provisions so penal as those contained in the 35th Article of the Regulations of 1772; and in justification of such part of them as relate to the convicted offender himself, it may be remarked, that they are strictly consistent with the Mohummudan law of *See'ifut*, as explained in the preceding section. The fine upon the village, of which the offender is an inhabitant, might also be justified, if regulated by a due regard to circumstances; especially to a neglect of means, either of preventing the commission of the offence, or of apprehending the offender. But the disposal of the family of the criminal, to pass their lives in slavery, without proof of their participation in the criminality upon which so heavy a sentence is grounded, cannot be reconciled with justice or humanity; and it must therefore be satisfactory to note, that if this part of the rule was (under the discretion vested in the government) ever enforced; it has long since ceased to operate.* A restriction indeed in the application of the stated penalty, to professed robbers, and murderers, appears to have been introduced by Mr. HASTINGS, in the next year, 1773; and he, at the same time, submitted to the consideration of government, in the form of queries for determination, sundry points, upon which the Mohummudan law, or the dispensation of it by the existing courts of judicature, had been found repugnant to the principles, or inadequate to the ends, of

* The Regulations cited are inserted in the 6th Report of the Committee of Secrecy appointed by the House of Commons in 1773; but may be more conveniently referred to in the Appendix, or 3d Vol. of Mr. E. COLEBROOK's *Digest of Regulations*, recently published; in which the Judicial, Revenue, Commercial and other Regulations of the Bengal Government, passed antecedently to those of 1793, have been collected under separate heads; and furnish the most useful and ready means of ascertaining what rules were in force, at any period upon the several subjects to which they relate. In like manner the 1st and 2d Vols. of this meritorious public work (in which the Regulations enacted from the commencement of 1793 to the end of 1806, are abstracted, and digested under distinct heads, alphabetically arranged) must afford to the Company's Civil Servants, in every Department, an easy access to the Rules prescribed for their guidance; and must essentially promote a general and correct knowledge of the now voluminous Code of Regulations in force.

justice. His letter upon this subject, dated the 10th July 1773, is so explicit; and demonstrates so particular an attention to the principal defects of the Mofulman criminal law, at an early period after the administration of justice, in Bengal, came under the superintendence of the British Government; that it appears to merit insertion at length in this place.

“ THE term decoit, in its common acceptation, is too generally applied to robbers of every denomination; but properly belongs only to robbers on the highway, and especially to such as make it their profession, of whom there are many in the woody parts of the district of Dacca, and on the frontiers of the province; a race of outlaws who live, from father to son, in a state of warfare against society; plundering and burning villages and murdering the inhabitants. These were intended by the Board, in the 35th Article of their judicial regulations, which declares that all such offenders shall suffer death, and their families be condemned to perpetual slavery. Severe and unjust as this ordinance may seem, I am convinced that nothing less than the terror of such a punishment will be sufficient to prevail against an evil, which has obtained the sanction and force of hereditary practice, under the almost avowed protection both of the zemindars of the country, and the first officers of the government. Yet if a careful distinction be not made, the raiat, who, impelled by strong necessity, in a single instance, invades the property of his neighbour, will, with his family, fall a sacrifice to this law; and be blended in one common fate with the professed decoit, or the murderer. In the foudarry trials nothing appears but the circumstances of the robbery for which the prisoner is arraigned. That he is a decoit is taken upon presumption, and all the world are his enemies. The Moulavies in the provincial courts refuse to pass sentence of death on decoits, unless the robbery committed by them has been attended with murder. They rest their opinion on the express law of the Coran, which is the

Letter from Mr. HASTINGS, dated 10th July 1773, proposing a reformation of the penal jurisdiction, to professed robbers, and murderers. And submitting several points of Mohummudan law found repugnant, or inadequate, to the ends of justice.

infallible guide of their decisions. The court of Nizamur, under whose review the trials pass, and whole province it is to prepare the *fatwas* for the final sentence and warrant of the *Názim*, being equally bound to follow the Mahomedan law, confirm the judgment of the provincial court. The Mahomedan law is founded on the most lenient principles, and an abhorrence of bloodshed. This often obliges the sovereign to interpose, and by his mandate to correct the imperfection of the sentence, to prevent the guilty from escaping with impunity, and to strike at the root of such disorders as the law will not reach. It is worthy of remark, that the instances, which are recorded in history of strict and exemplary justice in the princes of that religion, are all of the most sanguinary kind; and inflicted without regard to the law, and generally without any regular process or form of trial. I should be sorry to recommend an example of such rigour for the practice of our government. I mean only by this short discussion to show, that it is equally necessary and conformable to custom for the sovereign power to depart in extraordinary cases from the strict letter of the law, and to recommend the same practice in the cases now before us. I offer it therefore as my opinion, that the punishments decreed by this government against professed and notorious robbers be literally enforced; and where they differ from the sentences of the *adawlut*, that they be superadded to them by an immediate act of government; that every convicted felon, and murderer, not condemned to death by the sentence of the *adawlut*, and every criminal who has been already sentenced either to work during life upon the roads, or to suffer perpetual imprisonment, be sold for slaves, or transported as such to the Company's establishment at Fort Marlborough; and that this regulation be carried into execution by the immediate orders of the Board, or by an office instituted for that purpose in virtue of a general order or commission from the *Názim*. By these means the government will be released from

from a heavy expence in erecting prisons, keeping guards in monthly pay, and in the maintenance of accumulating crouds of prisoners. The sale of the convicts will raise a considerable fund, if these disorders continue. If not, the effect will be yet more beneficial. The community will suffer no loss by the want of such troublesome members, and the punishment will operate as an example much more forcible and useful than imprisonment, fines, or mutilation. The former, to a people addicted to their ease, and who see in such a condition only an exemption from the necessity of daily labor, loses much of its terror. Fines fall with unequal weight on the wealthy and on the indigent. They are unfelt by the first; they prove equivalent to utter ruin or perpetual imprisonment to the last. And mutilation, which is too common a sentence to the Mahomedan Courts, though it may deter others, yet renders the criminal a burthen of the public, and imposes on him the necessity of persevering in the crimes which it was meant to repress."

"I **ENG** leave to subjoin the following queries for your determination, as they have occurred to me in the proceedings of the adawlut already referred to. I have annexed my opinion to each.

Queries submitted by Mr HASTINGS for the determination of the Council, relative to the provisions and administration of the Mahomedan law.

1st. Whether the *fatwa*, or decree of the *Nizamut Adawlut*, after it shall have received the confirmation of the *Nazim*, shall be carried into execution precisely in the terms of his warrant, or whether this Government shall interfere in adding to, or commuting, the punishment, in cases wherein it shall appear inadequate to the crime, or ineffectual as a check?"

"ALTHOUGH we profess to leave the *Nazim* the final judge in all criminal cases, and the officers of his courts to proceed according to their own laws, terms, and opinions, independent of the controul of this Government; yet many cases may happen in which an invariable observance of this rule may prove of

of dangerous consequence to the power by which the Government of this country is held, and to the peace and security of the inhabitants. Whenever such cases happen, the remedy can only be obtained from those in whom the sovereign power exists. It is on these that the inhabitants depend for protection, and for the redress of all their grievances; and they have a right to the accomplishment of this expectation, of which no treaties nor casual distinctions can deprive them. If therefore the powers of the Nizamut cannot answer these salutary purposes; or, by an abuse of them, which is much to be apprehended from the present reduced state of the Nazim, and the little interest he has in the general welfare of the country, shall become hurtful to it; I conceive it to be strictly conformable to justice and reason, to interpose the authority or influence of the Company, who, as Dewan, have an interest in the welfare of the country; and as the governing power, have equally a right and obligation to maintain it. I am therefore of opinion, that whenever it shall be found necessary to supersede the authority of the Nazim, to supply the deficiencies, or to correct the irregularities, of his courts, it is the duty of this Government to apply such means as in their judgment shall best promote the due course and ends of justice; but that this license ought never to be used without an absolute necessity, and after the most solemn deliberation. In many cases it may not be difficult to obtain the Nabob's warrant for such deviations from the ordinary practice, as may be requisite; and it were to be wished, that they could be always enforced by his authority; but I see so many ill consequences, to which this would be liable, both from his assent and from his refusal, that I am rather inclined to propose, that every act of this kind be superadded to his sentence by our own Government. Although this is my opinion upon the question as it respects the rights of justice, and the good of the people, I am sorry to add, that every argument of personal consideration strongly opposes it, having but too much reason to apprehend, that while the po-

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pular current prevails, which over-runs every sentiment of candor towards the Company and its Agents, it will be dangerous both to our character and fortunes to move a step beyond the plain and beaten line; and that, laudable as our intentions were, we have already done too much. My duty compels me to offer the advice which I have given; and to that I postpone every other consideration."

" 2d. WHETHER the distinction which is made by the Mahomedan Law, between murder perpetrated with an instrument formed for shedding blood, and death caused by a deliberate act, but not by the means of an instrument formed for shedding blood, shall be admitted; and whether the fine imposed on the latter shall be allowed as a sufficient punishment?"

" If the intention of murder be clearly proved, no distinction should be made with respect to the weapon by which the crime was perpetrated. The murderer should suffer death, and the fine be remitted. I am justified in this opinion by good authorities, even among the Mussulmans, although the practice is against it. I will venture to appeal to the abstract of the proceedings which accompanies this for a proof of the inequality and injustice of the decisions founded on this strange distinction; besides the evil tendency which it derives from the little dread an indigent offender feels of a penalty which he knows can never be literally inflicted upon him; and which I fear is frequently the cause of murder, as it serves to screen the crime of robbery with no additional consequence to the criminal. I beg leave to quote an instance in the proceedings above referred to. A man held the head of a child under water till it was suffocated, and made a prize of her clothes and the little ornaments of silver which she wore. It was evident that his object was no more than robbery, and murder the means both of perpetrating and concealing it. There is too much cause also to suspect the extraordinary manner in which

the murder was committed was suggested by the distinction made by the law in question, by which he was liable to no severer retribution than for the simple robbery; whereas he would have been sentenced to suffer death, had he killed the deceased with a knife or a sword, although he might have been impelled to it by sudden passion, and not premeditated design. Yet for this horrid and deliberate act, he is pronounced guilty of manslaughter only; and condemned to pay the price of blood, which seems invariably fixed at the sum of rupees 3333 5 4.

“ 3d. WHETHER the punishment decreed by the 35th article of the judicial regulations, formed by the Board, shall be carried into execution without the sentiments of the Nizamut Adawlut, or the warrant of the Nazim; and in what manner?”

“ UPON this question I have already declared my opinion in the affirmative. I would recommend that every case, to which this ordinance may be applied, be laid before the Board, and their sanction obtained for its being carried into execution. I submit it to their consideration, whether it may not be expedient to appoint some office which shall have it in special charge to record such extraordinary proceedings, to prepare them for the judgment of the Board, and to execute their orders upon them.

“ 4th. WHETHER the privilege granted by the Mahomedan law to the sons or nearest of kin, to pardon the murderers of their parents or kinsmen, shall be allowed to continue in practice? or in what manner the government shall proceed in cases of this kind, if it shall be judged expedient to make an example of the criminals, in opposition to the letter of the law, and the sentences of the court of adawlut?”

“ THIS law, though enacted by the highest authority which the professors of the Mahomedan faith can acknowledge, appears to be of barbarous construction, and contrary to the first principle of civil society, by which the state acquire an interest in every member which composes it, and a right in his security. It is a law, which, if rigidly observed, would put the life of every parent in the hands of his son; and by its effect on weak and timid minds, which is the general character of the natives in Bengal, would afford a kind of pre-assurance of impunity in those who were disposed to become obnoxious to it. If the Nazim cannot be influenced to abolish totally this savage privilege, which we know is not universally admitted; or the courts of justice to refuse it; I am of opinion that the government should interfere, by its own authority, to prevent its taking effect, by causing the sentence to be executed without leaving an option in the children or kinsmen to frustrate it by their pardon.”

“ 5th. WHETHER the law which enjoins the children, or nearest of kin to the person deceased, to execute the sentence passed on the murderers of their parents or kinsmen, on account of its tendency to cause such crimes to pass with impunity, shall be permitted to continue, or whether it shall not be abolished by a formal act of government?”

“ THIS law, supposed of the same divine original, is yet more barbarous than the former; and in its consequences more impotent. It would be difficult to put a case, in which the absurdity of it should be more strongly illustrated, than in one now before us, of a mother condemned to perish by the hands of her own children for the murder of her husband. Their age is not recorded, but by the circumstances, which appear in the proceedings, they appear to be very young. They have pardoned their mother. They would have deserved death themselves, if they had been so utterly devoid
of

of every feeling of humanity, as to have been able to administer it to her who gave them life. I am of opinion, that the courts of justice should be interdicted from passing so horrid a sentence, by an edict of the Nazim, if he will be persuaded to it ; by the government, if he refuses."

" 6th. WHETHER fines, inflicted for manslaughter, shall be proportioned to the nature of the crime, as the Mohumudan law seems to intend ; or both to the nature and degree of the crime, and to the substance and means of the criminal?"

" If the fine exceeds the means of the criminal it must deprive the state of his service, and prove a heavier punishment than the law has decreed him."

" 7th. WHETHER the fines shall be paid to the Nazim, or taken by the Company as Dewan? or, whether they shall not be set apart for the maintenance of the courts and officers of justice, and for the restitution of the losses sustained by the inhabitants from decoits or thieves?"

" It may be dangerous to admit of such a right in the Nazim. It cannot be better or more equitably employed, than for the uses expressed in the concluding terms of the question."

" ALTHOUGH it was incumbent upon me to deliver my own opinion upon the above references, while I requested that of the Board, I have offered it with diffidence, and I confess with some reluctance, knowing the objections to which every kind of innovation is liable, but more especially in the established laws, or forms of justice. But I conceive, that the points which I have offered to your consideration will be found, in reality, not so much to regard the laws in being, as the want of them ; a law which defeats its own ends and
operation

operation being scarce better than none. Whatever your determination shall be concerning them, I shall most readily acquiesce in, and shall give my heartiest assistance to its effectual execution."

ON the 31st August 1773, the other members of the government, having considered the letter addressed to them by Mr. HASTINGS, recorded their opinion upon it in the following terms.

"The Board are fully sensible of the justness and propriety of the President's remarks upon the criminal law of this country: their sentiments in general coincide with his: and they are equally convinced with him of the absolute necessity that a power should exist to control and superintend the sentences of the Mahometan judges; and where the letter of the law appears clearly repugnant to the principles of good government and common sense, to apply such a remedy as the case may require; for without this interposition, it is evident, from the instances given by the President, that the most atrocious criminals might escape with impunity, by means of a precaution in the manner of perpetrating the crime; by the privilege enjoyed by individuals of remitting the punishment; and by the many nice distinctions which the expounders of the Coran have introduced. In order to prevent these abuses, and to provide a remedy for extraordinary evils, the sovereign power, in every Mahometan state, has reserved to itself the right of interposing with its authority; and of issuing such mandates as are evidently necessary for the benefit of society; and for that personal security which every member of a community is entitled to. In this country it has not only been the custom, but seems to be a maxim interwoven in the constitution, that every case of importance, where the precise letter of the law would not reach the root of the evil, should be submitted to the judgment of the *Hakim*, or ruler of the country, by an express reference added to the sentence. In a point however of so de-

Opinion of the
other Members
of the Govern-
ment upon the
points submit-
ted by Mr.
HASTINGS.

licate and important a nature, the Board would wish to consider it with the benefit of the presence and councils of the President; and be furnished with the fullest information before they come to any determinate resolution. They are sensible of that difficult situation in which they are placed; and would wish, with the President, that where a deviation from the strict letter of the law becomes indispensable, it could be enquired into by officers appointed by the Nazim, and enforced by his warrants."

The Nizamut Adawlut which had been established at Moorshedabad in 1774, removed to Calcutta in the same year, and the Darogah of it placed under the control of the Governor.

THE President was accordingly requested to ascertain the sentiments of the *Nuwab*, and his officers, upon the subject under consideration; and as, in consequence of the abolition of the Controlling Council of Revenue at Moorshedabad, the *Nizamut Adawlut* had, in the preceding year, been removed to the Presidency, it was proposed, with a view to prevent the delay experienced, in transmitting the *Futwas* of the *Nizamut Adawlut* for the *Nuwab's* warrant, that a person on his part should be appointed to reside in Calcutta, with authority to affix the *Nazim's* seal to warrants issued for the execution of sentences approved by the law officers of the *Nizamut Adawlut*. This arrangement was accordingly adopted, with the consent of the *Beegum*, on the part of the minor *Nuwab*; and SUDR-ÖÖL-HUK KHÁN, the *Daroghah* of the *Nizamut Adawlut*, being appointed to the *Neeabut* of this branch of the *Nizamut*, the President of the Council was requested "to
 "superintend him in the exercise of his office; as well in
 "revising sentences of the *Adawlut*; as in passing the war-
 "rants and affixing the seal." This superintendence vested in the President and Governor a general control over the administration of criminal justice; and it appears from the public records to have been assiduously and beneficially exercised by Mr. HASTINGS, during a period of eighteen months (in the course of which, viz. on the 19th April 1774, a new Police Establishment, consisting of foudars, tanadars, and pikes

A police establishment of foudars, tanadars, and pikes, provided in 1774.

was

was provided ; *) but on the 14th April 1775, he desired to relinquish his trust, as finding the duty of it too heavy, and the responsibility too dangerous. The superintendence and control of the administration of criminal justice were, in consequence, transferred to MOHUMMUD RUZÁ KHÁN ; who, in October 1775, was, at the recommendation of the Governor and Council, appointed *Nazib Nazim*, as well as guardian of the young Nuwáb MOBÁRUK ō-DOULAH ; and the court of *Nizamut Adawlut* was removed back from Calcutta to Moorsheedabad. †

Superintendence of criminal jurisdictions transferred to the Nuwáb MOHUMMUD RUZÁ KHÁN, as *Nazib Nazim*, in 1775.

ON the 6th of April 1781, the establishment of foudjars and zemadars, which had not been found to produce the good effects intended by this institution, was abolished ; and the judges of the Court of Dewanny Adawlut were “ invested with the power, as magistrates, of apprehending decoits, or persons charged with the commission of any crimes, or acts of violence, within their respective jurisdictions.” They were not, however, empowered to try or punish such persons ; nor to detain them in confinement ; but were required to “ immediately send them to the darogah of the nearest foudjarry court with a charge in writing setting forth the grounds on which they had been apprehended.” At the same time, to enable government to observe the effects of the authority thus entrusted to the judges of the civil courts ; as well as to any zemadars who, with the permission of Governor General and Council, might be invested with similar police jurisdiction ; and to watch over the general administration of criminal justice ;

Establishment, of foudjars and zemadars abolished, and powers vested in the judges of the dewanny adawlut, as magistrates in 1781.

Office of remembrance of the criminal court, established at the same time, under the control of the Governor General, to receive reports, and enable Government to watch over the general administration of criminal justice.

* See the plan of this establishment, and the grounds upon which it was founded, in the proceedings of the Governor and Council, under date the 19th April 1774, page 120, of Mr. COLEBROOKE'S Compilation before noticed. It is only necessary to remark here, that all persons “ convicted of receiving fees, or other pecuniary acknowledgements, from robbers, knowing them to be such, or of abetting or conniving in any shape at their practices,” were declared equally criminal with them, and punishable with death.

† The proceedings of Government, connected with this measure, are included in Mr. COLEBROOKE'S compilation, p. 125 to 128.

an office was established at the Presidency, under the immediate control of the Governor General, to receive monthly returns and reports from the magistrates, and from the Naib Nazim; to arrange which, and to maintain an effectual check on all persons empowered with the administration of criminal justice, an officer was appointed to act under the Governor General, with the title of remembrancer of the criminal courts. *

Powers vested in the magistrates by a regulation for the administration of justice in the foudarry courts, passed in 1787.

In June 1787, when, in consequence of instructions from the Court of Directors, the offices of collector, judge, and magistrate (except in the cities of Dacca, Moorshedabad and Patna) were united in the same person; but under distinct rules for his guidance in each capacity; a regulation, consisting of twenty-nine articles, was enacted, and printed, for "the administration of justice in the foudarry or criminal courts, in Bengal, Behar, and Orissa." * By this regulation it was made the duty of the magistrate "to apprehend all murderers, robbers, thieves, house-breakers, or other disturbers of the Peace; and to send them to take their trial, accompanied with a written charge in the Persian language, to the nearest foudarry court." The Magistrate was "further invested with power to hear and determine, without any reference to the foudarry courts, all complaints or prosecutions brought before him for petty offences, such as abusive language, or calumny, inconsiderable assaults or affrays; and to punish the same, when proved, by corporal punishment not exceeding fifteen rattans; or imprisonment not exceeding the term of fifteen days: but, in all cases affecting either the life or limbs of the party accused, or subjecting him to a greater punish-

* Vide the resolutions of Government respecting the arrangements made in April 1781—P. 128 to 130 of Mr. COLERBROOK's compilation. But they do not contain any modification of, or addition to, the provisions of the Mohummudan law.

† See this regulation in Mr. COLERBROOK's compilation—P. 131 to 140.

ment than that above specified," the case was ordered to be referred to the nearest foudarry adawlut, the darogah of which, with respect to the trial of causes, was declared "totally independent of the magistrate; but subject in every respect to the Nuwab MOHUMMUD RUZA KHAN, in his capacity of *Naib Nazim*;" who was directed to "correspond with the Governor General, and Members of the criminal courts, upon all foudarry subjects, as heretofore." The other detailed provisions of the regulation passed on the 27th June 1787, do not call for particular mention in this place; and have been superseded by the regulations subsequently enacted.

THE power vested in the magistrates, to take cognizance of petty offences, obviated in some degree the hardship and inconvenience which had before been experienced, from the necessity of delivering over for trial, to the darogah of the foudarry court, all parties charged with a breach of the peace, however slight, or any other criminal act, however trivial in its nature and consequences. But as all crimes of consequence were still exclusively cognizable by the *Naib Nazim*, and his subordinate officers; as the sentences of the *Nizamut Adawlut*, held at Moorshedabad under the superintendence of the Nuwab MOHUMMUD RUZA KHAN, were final; and not notified to government until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the *Naib Nazim*, and removable at his pleasure; and as he possessed an almost exclusive control over those courts and their proceedings; many defects in the Mohummudan law, and abuses in the administration of it, were left unremedied; and continued to prevail, till the latter part of the year 1790; when the system now in force (except that the offices of magistrate and collector had not then been separated) was introduced by Marquess CORNWALLIS.

Advantages derived from empowering the magistrates to take cognizance of petty offences.

But many defects in the Mohummudan law, and abuses in the administration of it, by the *Naib Nazim*, and his officers, still left unremedied.

IN His Lordship's Minute recorded on the 1st December 1790,
O o after

Minute of Marquess CORNWALLIS in 1790, stating the existing defects,

and proposing
amendments,
which intro-
duced the sys-
tem now in
force.

after noticing the measures adopted for amending or rendering more efficient the criminal jurisprudence of the native government, from 1773 to 1787, he stated the following information and suggestions. " Still the general state of the administration of criminal justice throughout the provinces is exceedingly and notoriously defective. With a view to ascertain more particularly the nature and causes of the defects, and to collect the necessary information for remedying them, I directed some queries to be stated to the magistrates of the several districts, from the answers to which it will appear that the evils complained of proceed from two obvious causes: 1st The gross defects in the Mahommedan law; and 2ndly. The defects in the constitution of the courts established for the trial of offenders. A provision against the first of these defects cannot otherwise be made than by our correcting such parts of the Mahommedan law as are most evidently contrary to natural justice, and the good of society. That this government is competent to such an amendment of that law, as may appear thus essentially necessary, cannot, I think, admit of a doubt; since being entrusted with the government of the country, we must be allowed to exercise the means necessary to the object and end of our appointment; besides that we appear to possess a sufficient legal recognition of the right in question from this, that the alterations made in the established Mahommedan law of the country by the first code of judicial regulations of 1772, and more particularly that entire alteration, and new and very severe provision therein contained, for the punishment of decoits, together with the superintendence and controul over all the new criminal courts which the said regulations vested in the Company's covenanted servants, stand both fully submitted to Parliament in the sixth report of the Committee of Secrecy, already quoted, as a discretionary act of legislation by the President and Council in the year 1772; and yet so far was the Parliament from disapproving thereof, or li-

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miting in any respect the authority of our government in India, that with this information before it, and having these reports as the ground-work of the law then passed, the Act of the 13th of George the Third, Chapter 63d, and Section 7th, vests the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in the Governor General and Council, for such time as the territorial acquisitions and revenues shall remain in the possession of the said Company, in like manner (as the said act recites) to all intents and purposes whatever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or Select Committee, in the said kingdom. And as it was then before the legislature that the President and Council had interposed, and altered the criminal law of the country; such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned and authorized. As we thus appear to possess authority to introduce any necessary amendments in the laws of the country, it is surely incumbent on us not to allow any longer the flagrant abuses in the foudgarry department, or exercise of criminal justice, according to the Mahomedan law, throughout the provinces; by the most received opinions among the native distributors of which a murderer is not liable to capital punishment, if he commit the act by strangling, drowning, poisoning, or with a weapon, such as a stick or club, on which there is no iron; or by such an instrument as is not usually adapted to the drawing of blood. That this part of the law should be abrogated, and the apparent intention of the criminal in such instances made to regulate his sentence, instead of the mere mode of the commission of the crime, seems evidently to follow from the plainest principles of natural reason. It need therefore be only farther observed, that we have the greater encouragement for this alteration from the consideration, that even the Mahomedan law itself is not entirely settled upon the most important distinction;

tion; for although the Doctor ABOO HUNEEFA (by whose sentiments proceedings in criminal cases are generally regulated in India) is of the opinion I wish to see corrected; yet his immediate disciples and successors, YOOSUF and MAHOMMED, (who were lawyers of the greatest eminence) gave a very different judgment; contending and laying down as a rule of law, that the intention, and not the mode or instrument, should be considered, in cases of deprivation of life by the act of a second person. SHAREEF, a great lawyer, and a follower in general of ABOO HUNEEFA, says in the beginning of the *Shareefeyah*, "that the punishment of retaliation, or death for death, is denounced against those who commit homicide with an intention apparently malicious, as by wounding with a drawn weapon, or other dangerous instrument, by which the parts of a body may probably be divided, as with a sharp stone, or by using fire, which acts as powerful as any weapon; but a mulct, or expiation, or penance, is the legal punishment of those manslaughterers whose intent is not apparent; as if they struck with an instrument which does not generally occasion death, as a wand, or a whip, or a small stone." He makes the *intent* the criterion, and so reasonable and well grounded has this last opinion been found, that both the Mahomedan government, and our own, have from time to time availed themselves of it to award capital punishment against such offenders; as will appear in the late correspondence with the Resident at Benares, and from the proceedings of the President and Council in the year 1773, already quoted."

"THE next alteration I would propose is that already alluded to, in regard to the option left to the next of kin to remit the sentence of the law, and pardon the criminal. The evil consequences, and the crimes which thereby escape punishment, are so manifest and frequent, that to take away the discretion in the relations seems absolutely requisite to secure an equal administration of justice, and will constitute a strong additional

additional check on the commission of murder or other crimes, which are no doubt often perpetrated under the idea of an easy escape, through the notorious defect of this part of the existing law; which at first perhaps was confined to appeals or private prosecutions by the next of kin, and had no application to public prosecutions in the name of the sovereign; and which is besides peculiarly inapplicable to this country (however it may have suited the society it was originally intended for), because where Brahmins commit murder on any person of the Hindoo religion, they know that they do so with almost perfect impunity; since in most cases it cannot be expected that any Gentoo will ever desire or be consenting to the death of a Brahmin; of which a case exactly in point is now depending before the Board from Benares, where a Brahmin having wantonly killed his wife, has, although confessing and convicted of the crime, been pardoned by her relations. I therefore propose:

“ 1st. THAT the doctrine of YUSUF and MAHOMMED, in respect to trials for murder, be the general rule for the officers of the courts to write the futwas or law opinions applicable to the circumstances of every trial, and that the distinctions made by ABOO HUNEEFA as to the mode of the commission of murder be no longer attended to; or in other words, that the intention of the criminal, either evidently or fairly inferable from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent) do constitute the rule for determining the punishment; a proposition which cannot even be said to be any violation of the law of the Mussulmans; but only a rational preference given to the opinions delivered by two of their most learned doctors, in contradiction to that of their master, from whom, after full consideration, they both dissented; and we have it in evidence before us that the best subsequent, or more modern, law authorities among the Mahomedans,

Modifications
of the Moham-
medan criminal
law, proposed
by Marquis
CORNWALLIS

hommedans, do expressly, in cases where ABOO HUNEEPA and his said two disciples differ, leave it to the *Hakim*, or ruling power, to make an option between their varying sentiments; upon which ground I think it is plainly our duty to adopt, in all such cases, the opinion of either that shall appear most rational; and fitted to promote the due and impartial administration of justice.

“ 2dly. THAT the relations be in future debarred from pardoning the offender; and that the law be left to take its course upon all persons convicted, without any reference to the will of the kindred of the deceased.”

“ 3dly. I THINK that where the Mahommedan law prescribes amputation of legs and arms, or cruel mutilation, we ought to substitute temporary hard-labor, or fine, and imprisonment, according to the circumstances of the case. I am of opinion also that a rule should be made for allowing decoits, and other criminals, to become witnesses against each other, in the manner of King's evidence in England; care being always taken that no person be ever convicted on the sole testimony of accomplices unless their credit be supported by circumstances.”

Provisions made, in consequence, in a regulation passed on the 3d December 1790;

And in subsequent regulations of 1791 and 1792.

PROVISIONS to the effect of the Governor General's first and second propositions, above stated, were accordingly included in a regulation, of fifty-two articles, “ for the administration of justice, in the foudary and criminal courts, in Bengal, Behar “ and Orissa,” passed on the 3d December 1790. Further provisions for the more effectual attainment of the object of the second proposition, under a scrupulous adherence of the law officers to the prescribed rules of Mohummudan Law, as well as for a commutation, in all cases, of the legal penalty of mutilation, to imprisonment and hard labor, and for preventing the religious tenets of witnesses from being considered in any case

a bar to the admission of their evidence, were also enacted, on different dates, in the years 1791 and 1792. *—But as they were re-enacted, with additions or modifications, in Regulation IX, 1793, hereafter specified, it does not appear requisite to notice them in this place. The rules passed for the guidance of the magistrates, courts of circuit, and Nizamut Adawlut, on the 3d December 1790, and during the two succeeding years, were likewise re-enacted, with alterations, by Regulation IX, 1793. It will be sufficient therefore to remark here, that the defects in the constitution of the criminal courts, noticed by Marquess CORNWALLIS as the second cause of the general imperfect administration of criminal justice, (in addition to those arising from the provisions of the Mosulman law, administered by Mohumudan judges,) were stated in His Lordship's minute, already quoted, to be as follows. "The prisoners whose cases are referred for the final sentence of the Nizamut Adawlut at Moorshedabad are not tried by that court; but in the subordinate criminal courts of the districts in which they are apprehended. From the time of their commitment by the magistrate; they remain in the custody of the darogah, or judge of the criminal court, with whom it rests to determine when they shall be tried; what witnesses shall be summoned; to what points they shall be examined; and in what manner their evidences shall be taken down; and as these courts are mostly situated at a great distance from the place of residence of the Nabob MAHOMMED RUZA KHAN, and the English magistrates upon the spot are prohibited from interfering with their proceedings, it is in the power of the officers, with little probability of detection, to frame proceedings, which, when transmitted to the Naib Nazim, must inevitably procure the acquittal of the prisoner; or by protracting his trial, to oblige the prosecutors to abandon the prosecution, or agree to a compromise.

Re enacted,
with additions,
or modifications,
in Regulation
IX,
1793.

Further extract
from Minute of
Marquess
CORNWALLIS,
stating defects
in the constitution
of the criminal
courts,
as submitted in
the year 1792.

* See the whole of the rules passed in 1791 and 1792, as well as the regulation of 3d December 1790, in Mr. COLLEBROOK'S compilation—p. 141 to 167.

A reference to the annexed reports from the several magistrates will evince that the enormities daily committed throughout the country, are to be attributed more to these and other abuses, which too generally prevail in the subordinate courts, than to the defects of the criminal law. The length of time which generally elapses between the commitment of a prisoner, and the passing of his sentence, is another evil of the greatest magnitude, resulting from the present constitution of the criminal courts. This delay, even in cases where it does not originate from connivance between the prisoner and the officers of justice, is attended with the most pernicious effects. If the prisoner is at length acquitted, he nevertheless suffers all the consequences of a long and painful imprisonment. If he is convicted, and sentenced to suffer the punishment due to his crime, the delay defeats the object of his punishment; which is to deter others from committing the same crime. For it has been justly observed "that punishment should follow the crime as early as possible, that the prospect of gratification or advantage, which tempts a man to commit the crime, should awaken the attendant idea of punishment." But it is unnecessary to have recourse to the testimonies of the magistrates to prove the abuses practiced in these courts. The multitude of criminals with which the jails in every district are now crowded, the numerous murders, robberies and burglaries, daily committed, and the general insecurity of person and property which prevails in the interior parts of the country, are melancholy proofs of their having long and too generally existed. Having experienced therefore the inefficacy resulting from all the criminal courts and their proceedings being left dependent on the Nabob MAHOMMED REZA KHAN, and from the objections which he may be naturally disposed to feel, on the ground of his religion, to any innovations in the prescribed and customary rules and application of Mahomedan law; we ought not, I think, to leave the future controul of so important a branch of government to the sole discretion of any native, or indeed of any single person whomsoever."

On the grounds stated, with a view that the future trials of offenders might be conducted with expedition and impartiality, and that the supreme government might be enabled to superintend the general administration of criminal justice, it was proposed by Marquels Cornwallis, and provided by the regulation of 3d December 1790, above-mentioned, "that the Nizamut Adawlut, or chief criminal court, be again removed from Morshedabad and established at Calcutta. That this court (instead of being superintended by a native judge, subject to the control of the President of the Board, as heretofore) do consist of the Governor General and Members of the Supreme Council, assisted by the Kazee-ool-Koozat, or head Kazee of the provinces and two Mooftees. That the court do exercise all the powers lately vested in the Naib Nazim, as superintendent of the Nizamut Adawlut, leaving the declaration of the law, as applicable to the circumstances of the case, to the Kazee-ool-Koozat and Mooftees, agreeably to former practice. That the decisions of the court be in all cases regulated by the Mohummudan law, under the restrictions contained in the regulation." Four courts of circuit, superintended respectively by two covenanted civil servants of the Company, and each having a Kazee and Mooftee to assist the judges and expound the Mohummudan law, were at the same time established for the trial of offences not punishable by the magistrates; and they were directed to hold two general jail deliveries annually at the stations of the several magistrates within their divisions; commencing their first circuit on the 1st March, and the second on the 1st October of each year. In cases of acquittal, and of punishment less than death, or imprisonment for life, in which the judges of the courts of circuit might approve the Futwa of their law officers, they were empowered to pass a final sentence. But in cases of death or perpetual imprisonment, as well as in all cases where the judges might disapprove the futwa of their law officers, they were required to transmit their proceedings for the sentence of the Nizamut Adawlut.

Consequent
provision made
by regulation of
3d December
1790, for re-
moving the
Nizamut Adaw-
lut at Calcutta;
and powers.

Four courts of
circuit also estab-
lished for the
trial of offences
not punishable
by the magis-
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them.

Particular rules enacted for guidance of the courts of circuit and Nizamut Adawlut, will be specified in the next section.

THE more particular rules enacted, and now in force, for the guidance of the courts of circuit and Nizamut Adawlut, will be specified in the next section. The remainder of the present section will be confined to the modifications of, or additions to, the Mohummudan criminal law, which have been enacted by the regulations of 1793, and subsequent years.

Rule for delivery of futwas on trials for murder according to the doctrine of Yousuf and MOHUMMUD, and for infliction of punishment according to the intention of the criminal, without regard to the instrument, except as evidence of the intent.
R. IX, 1793, § I, and LXXV.

By Section L, Regulation IX, 1793, it was provided, that on trials for murder the law officers of the courts of circuit shall deliver their futwas according to the doctrines of YOUSUF and MOHUMMUD; and by Section LXXV, of the same regulation, a similar provision was made respecting the futwa of the law officers of the Nizamut Adawlut, with a further declaration, that the distinctions made by ABOO HUNFREAH and his two disciples, "as to the mode of committing murder, "shall not be adhered to by the Nizamut Adawlut, but the "intention of the criminal, evidently or fairly inferible from "the nature and circumstances of the case, and not the "manner or instrument of perpetration (except as evidence "of the intent) shall constitute the rule for determining the "punishment." These provisions were extended to Benares by Section XXII, Regulation XVI, 1795, and were re-enacted for the ceded provinces by Section XI, Regulation VII, and Section X, Regulation VIII, 1803. It was also expressly declared by Section V, Regulation VIII, 1799, (re-enacted for the ceded provinces in the First Clause of Section X, Regulation VIII, 1803,) that "wilful homicide by poison or by "drowning, when the intention of poisoning or drowning "may be evident, is included in the above rule; and that "in all such cases the Nizamut Adawlut, whatever may be "the futwa of their law officers, are to sentence the prisoner "to suffer death; provided they judge him fully convicted "of wilful murder, and do not consider him a proper object "of mercy."

Extended to Benares by R. XVI, 1795, § XXII.

And re-enacted for the ceded provinces, by R. VII, 1803, § XIX; and R. VIII, 1803, § X.

The above rule expressly declared to include wilful homicide by poison, or by drowning. R. VIII, 1799, § V, re-enacted for the ceded provinces by First Clause of § X, R. VIII, 1803.

By Sections LII, LV, and LXXVI, Regulation IX, 1793, provisions were made for doing away all operation of the will of the heirs in cases of murder, when they might not demand *Kiffas*; or when they might not appear to prosecute, or from minority might not be legally entitled to claim retaliation of death. But the whole of the cases, in which the Mohomedan law allows an option to the heirs of the slain, not having been expressly mentioned, a doubt arose upon the propriety of applying, to the cases not particularized, the rules contained in the above sections; which were therefore extended by Section II, Regulation IV, 1797; and the two following sections (which have been since re-enacted for the ceded provinces in the Second Clause of Section XV, Regulation VII, and in Section XI, Regulation VIII, 1803,) were substituted for them.

Provisions made for doing away operation of the will of the heirs, in cases of murder. R. IX, 1793, § 111, LV, and LXXVI.

Repealed by R. IV, 1797, § 11, and two following sections substituted.

Re-en Act for Ceded Provinces, by R. VII, 1803, § XV; and R. VIII, 1803, § XI.

§ III. "In trials for murder before the court of circuit, after the proceedings shall have been concluded in the manner prescribed by Section XLVII, Regulation IX, 1793, the law officer of the court, who may be present during the trial, shall be required by the judge to declare whether the prisoner is convicted of the charge against him; and shall subscribe his answer on the record of the court's proceedings. If the law officer shall declare the prisoner to be not guilty, the judge shall pass an immediate sentence of acquittal, and order him to be discharged; unless he shall see cause to disapprove such verdict, in which case he is to refer the proceedings on the trial for the sentence of the Nizamut Adawlut. If the answer of the law officer shall declare the prisoner to be convicted of wilful murder (*kutl-i-úmd*); the judge, without making any reference to the heir or heirs of the slain, shall require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mahomedan law, supposing all the heirs of the slain entitled to prosecute the prisoner for *kiffas*, to have attended and prosecuted him, at an

Courts of Circuit now to proceed in taking suit was from their law officers, and passing sentence thereupon in cases of homicide.

age competent to demand kiffas, and to have demanded kiffas. The futwah of the law officer upon this reference shall be also subscribed on the record of the court's proceedings; and whether the futwah declare the prisoner liable to suffer death, as must be the case in most instances of conviction of wilful murder, under the supposed demand of kiffas by the heirs of the slain; or, whether it declare the prisoner not liable to capital punishment, from the heirs of the slain not being legally entitled to demand kiffas, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the judge is, in either case, to refer the proceedings for the sentence of the Nizamut Adawlut, conformably to Section XLVII, Regulation IX, 1793. Should the answer of the law officer to the first reference acquit the prisoner of wilful murder; but convict him of homicide, of any one of the four denominations distinguished in the Mahomedan law, (viz. *shubab-i-ismd*; *kutl-i-khutá*; *kutl-i-kácem-mokám i-khutá*; and *kutl-ba subub*) the law officer is to declare the prescribed penalty for the same according to the Mahomedan law; and if his futwah should declare the *diyut*, or price of blood, to be the whole, or part, of the legal punishment, the court of circuit is to commute the fine to imprisonment for such period as it may consider adequate to the offence; and its sentences in such instances, as in all others according to the existing regulations, are to be carried into execution without reference to the Nizamut Adawlut, if for temporary imprisonment; or referred to that court, if for imprisonment for life; subject to the general provision contained in Section LIII, Regulation IX, 1793, for referring to the Nizamut Adawlut all trials wherein the Courts of Circuit may disapprove of the futwahs of their law officers."

Law officers of the Nizamut Adawlut how to deliver their futwahs on trials referred under the preceding rule.

§ IV. "In all cases referred under the foregoing section to the Nizamut Adawlut, the law officers of that court, provided they shall be of opinion, that the prisoner is duly convicted of

of

of murder, shall write their futwah upon the case referred to the law officer of the court of circuit, assuming always that all the heirs of the slain, entitled to prosecute for *Kifās*, attended, and prosecuted at an age which rendered them competent to demand *Kifās*, and that they demanded *Kifās*. But if they shall be of opinion that the prisoner is not duly convicted of wilful murder, they are to state their reasons for such opinion, and whether they consider the prisoner altogether innocent, or convicted of homicide under any of the four denominations distinguished by the Mohummudan law; adding, in the latter case, the legal penalty to which the prisoner is liable; and the court of Nizamut Adawlut, after considering their futwah so given, with the whole of the proceedings on the case, are either to require further evidence if they see occasion; or, to pass such final sentence as may appear consonant to justice and conformable to the Mohummudan law; with the exceptions and modifications which have been, or may be, authorized by the regulations; and subject to the several provisions therein contained. If in any case, not provided for by the regulations, the Mohummudan law appear to the court repugnant to justice, they are, notwithstanding, to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to recommend a pardon, or mitigation of the punishment, to the Governor General in Council; and at the same time to propose a new regulation to provide against a recurrence of the case, in the form prescribed by Regulation XX, 1793."

And the judges of the Nizamut Adawlut how to proceed thereupon.

By the above rules, which require the law officers to give their futwa, and authorize the Nizamut Adawlut to pass their sentence, on the supposition that all the heirs of the slain, entitled to prosecute for *Kifās*, have attended, prosecuted, and demanded *Kifās*, a complete remedy was applied to the obstruction of public justice, that had been found to arise from the influence allowed by the Mohummudan law, in cases of murder,

A complete remedy applied by the preceding rules, to the obstruction to justice from the influence of the heirs of the slain in cases of murder.

But certain cases of wilful homicide in which the murderer is not liable to capital punishment under the Mohammudan law, still unprovided for.

Further rule to provide for such cases, in P. VIII, 1799, § II, re-enacted for ceded provinces by R. VIII, 1803, § XV.

der, to the heirs of the slain. But cases of wilful homicide, in which the party convicted is not, under the Mohammudan law, liable to retaliation of death, from the heirs of the slain, not being legally entitled to demand *Kifās*, from the relation of parent and child, master and slave, or otherwise, though directed to be referred for the sentence of the Nizamut Adawlut, had not been specifically declared liable to capital punishment. It was therefore enacted by Section II, Regulation VIII, 1799, and re-enacted for the ceded provinces by Section XV, Regulation VIII, 1803, that "in every case of wilful murder, wherein the crime may appear to the court of Nizamut Adawlut to have been fully established against the prisoner, but the futwa of the law officers of that court shall declare the prisoner not liable, under the Mahomedan law, to suffer death by *Kifās*, solely on the ground of the prisoner's being father or mother, grandfather or grandmother, or other ancestor of the slain; or one of the heirs of the slain being the child or grandchild, or other descendant of the prisoner; or of the slain having been the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public; or on any similar ground of personal distinction, and exception from the general rules of equal justice; the court of Nizamut Adawlut, provided they see no circumstances in the case which may render the prisoner a proper object of mercy, shall sentence him to suffer death; as if the futwa of their law officers had declared him liable to *Kifās*; or to suffer death by *Seeafut*, as authorized by the Mahomedan law in all cases of wilful murder, under the discretion vested in the magistrate, with regard to this principle of punishment for the ends of public justice."

To kill another by his or her desire, declared unjustifiable, and liable to the punishment of murder by R. VII, 1799, § III.

It was at the same time declared by Section III, Regulation VIII, 1799, (re-enacted for the ceded provinces by Section XVI, Regulation VIII, 1803,) that "after the period fixed for the enforcement of this regulation, it shall not justify any prisoner
" convicted

§ II. " AFTER the date fixed for the operation of this regulation, any person who may be convicted of having, subsequent thereto, deliberately and maliciously intended to murder one individual, and of having in the prosecution of such intention, accidentally killed another individual, shall, on account of the murderous intention and actual homicide, be liable to the punishment of murder, in like manner as if he had killed the person intended to be murdered. In all such cases, the law officers of the courts of circuit and of the Nizamut Adawlut (to which court all trials of this description are to be referred) shall be required to state what punishment the prisoner would have been liable to, if he had committed the murder intended by him; and if their futwa shall declare him in such case liable to suffer death, or if under the futwa so given, and the modifications of the Mahomedan law, contained in Regulations IV, 1797, and VIII, 1799, or any other regulation, the prisoner be liable to suffer death; the court of Nizamut Adawlut, provided it be established to their satisfaction that the prisoner intended to commit the crime of deliberate and malicious murder; and that the homicide charged against him was actually committed by him in the prosecution of such murderous intention; shall sentence the prisoner to suffer death; unless they shall see any circumstances which may, in their judgment, render him a proper object of mercy; in which case they are to recommend to the Governor General in Council either the pardon of the prisoner, or a mitigation of his punishment, as they shall judge proper; stating, in either case, their reasons for the pardon or mitigation of punishment recommended by them."

A person convicted of having intended to murder one individual, and having, in the prosecution of such intention, killed another individual, declared liable to the punishment of murder.

Cases of circuit, and Nizamut Adawlut, how to proceed in such cases.

§ III. " THE rule contained in the preceding section is to be considered equally applicable to any other cases of homicide, which may be declared by the law officers of the courts of circuit, or Nizamut Adawlut, to be within the Mahomedan law of Kutl-i-Khota, Kutl-i-Kacem-Mokam-ba-Khota; or

The foregoing rule extended to all cases of accidental homicide, committed in prosecution of a murderous intention, or any criminal design, which if carried into effect, would have subjected the

offender to a
sentence of
death.

other legal denominations of accidental homicide ; but in which the prisoner shall be clearly convicted of having committed the homicide proved against him, with a murderous intention ; such as if carried into effect would have subjected him to a sentence of death ; or with a deliberate intention, to commit any crime, that, if committed in pursuance of the prisoner's criminal design, would have rendered him liable to a sentence of death."

In like manner
accidentally
wounding,
maiming, or
otherwise in-
juring one per-
son, in prosecu-
tion of an un-
lawful malici-
ous intention
to wound,
maim, or in-
jure another,
declared pun-
ishable as if
the act had
been commit-
ted upon the
party intended.

Courts of cir-
cuit how to
proceed in such
cases.

§ IV. " IN like manner, after the date fixed for the operation of this regulation, any person who may be convicted of having, subsequent thereto, unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to, one individual ; and of having, in the prosecution of such intention, accidentally wounded, maimed, or otherwise corporally injured, another individual, shall be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been perpetrated on the person intended to have been wounded, maimed, or otherwise injured. The law officers of the court of circuit, in such cases, shall be required to state the punishment to which the prisoner would have been liable if he had committed the act of which he is convicted, upon the person intended to have been wounded, maimed, or otherwise injured by him ; and the courts of circuit shall pass sentence accordingly, or refer the trial to the court of Nizamut Adawlut, as the case may be referrible to that court, or otherwise, under the general regulations."

Court of Niza-
mut Adawlut
how to proceed
on such cases,
when referred
to that court.

§ V. " IN trials referred under the preceding section to the court of Nezamut Adawlut, the law officers of that court shall also declare in their futwa to what punishment the prisoner would have been liable, if the act, of which he is convicted, had been committed as intended by him ; and the court after considering such futwa with the whole of the proceeding in the case, are to pass such sentence on the prisoner,

short

short of death, as they may judge adequate to his offence; or if they consider him a proper object of mercy, may recommend his pardon to the Governor General in Council, stating their reasons for the pardon recommended by them."

§ VI. "Such part of Section III, Regulation IV, 1797, as authorizes the courts of circuit, in cases of kutl-i-khota, and other cases of accidental homicide, when, the prisoner may be declared liable to the Diyut, or price of blood, to commute such price to imprisonment, is not to be considered applicable to any of the cases noticed in Sections II and III, of this regulation: but is to be in force, as heretofore, with regard to cases of homicide not otherwise provided for by the above sections. The courts of circuit, however, are not to sentence the prisoner to suffer any imprisonment, or other punishment, in the cases of accidental homicide mentioned in Section III, Regulation IV, 1797, although the Diyut should be declared by their law officers to be payable under the Mahomedan law, if the homicide shall clearly appear to have been committed by misadventure in the prosecution of a lawful act, and without any malignant intention."

Provision for commutation of the *Diyut*, to imprisonment, contained in § III, R. IV, 1797, not applicable to the cases of accidental homicide provided for by the above rules.

But to be in force, as heretofore, in other cases.

Unless the homicide shall appear to have been committed by misadventure, in the prosecution of a lawful act, and without any malignant intention.

FROM what has been stated in the preceding section, relative to the third general head of the Mohummudan criminal law, *Tâzeer* and *Seeâfut*, it appears that the Sovereign and his delegates are invested with a discretionary power of correction and punishment in three cases. 1st. In the case of offences for which no specific penalty of *Hudd*, or *Kifas*, has been provided by the law; being, for the most part, offences not of a heinous nature; the punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender. 2dly. For crimes within the specific provisions of *Hudd* and *Kifas*; when the proof against the person accused, of the commission of such crimes,

may

Remarks upon Mohummudan law of *Tâzeer* and *Seeâfut*, as stated in the preceding section, with explanation of cases to which a discretionary power of correction and punishment appears applicable.

may not be such as the law requires for a judgment of the specific penalties; though sufficient to establish a strong presumption of guilt: or although the proof be complete, as required for a sentence of *Hudd* or *Kifas*, when such sentence is barred by a remission of the claim to retaliation in cases of *Kifás*, or by any of the special exceptions which, under the general denomination of *Shoobah*, are considered by the prevalent authorities of Mohummudan law to bar a judgment for the specific penalties of that law. 3dly. For the most heinous crimes, in a high degree injurious to society, and particularly for repeated offences of this description, which, upon principles of public justice, for the safety of the community, may appear to require exemplary punishment, beyond the prescribed penalties and ordinary provisions of the law. In the adjudication of punishments under the discretion thus allowed by the Mohummudan law, especially in the second of the three cases stated, the *futwas* of the law officers, attached to the criminal courts, were found to be often governed by a consideration of the degree of proof against the party accused, rather than by the degree of guilt, and criminality of the act established against him; and the penalties awarded by them were, in many instances, adjudged on insufficient proof of the charge; whilst, in others, the penalty declared by them was inadequate to the heinousness of the offence, of which the prisoner had been convicted. It was therefore deemed necessary that provision should be made for determining the punishment to be adjudged by the criminal courts in all cases wherein a discretion is left by the Mohummudan law; as well to guard against the infliction of any punishment without sufficient evidence of guilt; as to maintain the uniform and adequate punishment of offenders, when convicted, according to the criminality of the offences established against them. The following rules were accordingly enacted for this purpose (including the ceded provinces) by Section II, Regulation LIII, 1803.

Futwas of the law officers found to be often governed by a consideration of the degree of proof against the accused, rather than by the guilt and criminality established against him.

Necessity, in consequence, for determining the punishment to be adjudged by the criminal courts in all cases wherein a discretion is left by the Mohummudan law.

Rules enacted for this purpose by § II, R. LIII, 1803.

First. " In all trials before the courts of circuit, wherein the Mohummudan law officers of those courts may consider the prisoner liable to discretionary punishment, (tazeer, acoobut, or seeasut;) their futwa shall declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment, in such cases, to be determined by the judge of circuit before whom the trial may be held, or by the court of Nizamut Adawlut, under the provisions contained in this, or any other regulation.

Futwa to be given by the law officers of the courts of circuit, in all cases of discretionary punishment.

Second. " If the crime, for which the prisoner is declared liable to discretionary punishment, in such cases, shall have been specifically provided for by any subsisting regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the judge, before whom the trial may be held, shall consider the crime to have been established against the prisoner; whether by his free and voluntary confession; or by the testimony of credible witnesses; or by strong circumstantial evidence; he shall sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or, if the case be referrible under the regulations for the sentence of the Nizamut Adawlut, shall transmit the trial, with his opinion thereupon, to that court."

Sentence to be passed in such cases if the crime have been provided for by any regulation.

Third. " If the crime, for which the prisoner is declared liable to discretionary punishment, shall not have been specifically provided for by any regulation, denouncing the penalty to be adjudged on proof of the commission of it; but be such as would have subjected the prisoner to the specific penalty of Hud, or Kifas, provided by the Mohummudan law, if he had been convicted by full legal evidence; and the futwa of the law officer shall declare him liable to discretionary punishment in consequence of the evidence not being such as the Mohummudan law requires for a sentence of Hud

Second futwa to be required, and sentence passed thereupon, if the crime have not been provided for by any regulation, but be such as would have subjected the prisoner to the specific penalty of Hud, or Kifas, if he had been convicted by full legal evidence.

or Kifas; though sufficient to convict the prisoner on strong presumptive proof or violent presumption (*ghālib-oo-zun*); the judge, before whom the trial may be held, provided he concur in the conviction of the prisoner, shall require the law officer to declare, by a second futwa, to what specific punishment (of Hud or Kifas) the prisoner would have been liable, under the Mahomedan law, if he had been convicted by full legal evidence; and shall proceed thereupon to pass sentence according to such second futwa; (commuting the punishment, if any regulation requires it;) or, if the case be referrible for the sentence of the Nizamut Adawlut, shall transmit the trial, with his opinion, to that court."

Similar mode of proceeding to be observed when the crime may not have been provided for by any regulation; and a sentence of Hud, or Kifas, is barred by some legal exception or distinction, not affecting the nature of the offence, and repugnant to justice.

Fourth. "THE judge, before whom the trial may be held, shall proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence, or upon strong presumptive proof) may not have been specifically provided for by any regulation; but would subject the prisoner to the specific penalty of Hud or Kifas provided by the Mahomedan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction (*shoobah*), not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice; in consequence of which bar to a judgment for the specific penalty the prisoner is declared liable to discretionary punishment. In such cases the law officer is to declare, by a second futwa, to what punishment the prisoner would have been liable under the Mahomedan law, for the crime committed by him, if the special exception or distinction, by which Hud or Kifas is barred in the particular case, had not existed; and the judge is to proceed thereupon as directed in the preceding clause."

Restriction, when the specific penalty is

Fifth. "NOTHING in this section, however, shall be construed

strued as authorizing a sentence of discretionary* punishment exceeding, or equal to, the specific punishment prescribed by the Mahomedan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mahomedan law, in consideration of circumstances which alter the nature, and diminish the criminality, of the offence, unless such enhanced or equal punishment for the crime in question shall have been expressly denounced by some regulation, in modification of the Mahomedan law."

re-mitted or miti-
gated by the
Mohammedan
law, in con-
sideration of cir-
cumstances
which alter the
nature and di-
minish the cri-
minality of the
offence.

Sixth. "Nor shall any part of the present regulation be considered to authorize the infliction of any punishment whatever upon suspicion only, (termed by the Mahomedan lawyers, *Wuhm*, *Shuk*, or *Shoobah Zaeefak*.) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony, or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption, held sufficient for conviction; and recognized as such in the Mahomedan law, under the denominations of *Ghalib-oo-zun*, *Akbur-oo-race*, *Shoobuh-ucurvee*, or *shoodced*. When the judge, before whom a prisoner may be tried, shall not consider him convicted on such presumptive proof; or on the evidence of credible witnesses; or on his own confession; he shall not sentence the prisoner to suffer any punishment; whatever may be the *futwa* of the law officer. But in cases of strong suspicion though not amounting to conviction, as well as upon proof of notorious bad character, the judge of circuit may direct the *zillah* or city magistrate to detain the prisoner in custody until he shall give sufficient security for his future good behaviour, and appearance when required."

Further restric-
tion against the
infliction of any
punishment,
upon suspicion
only, not
amounting to a
strong presumption
of guilt.

But security
may be required
in cases of
strong suspi-
cion, as well as
upon proof of
notorious bad
character.

Seventh. "If the crime, of which a prisoner is convicted, and for which he is declared liable to discretionary punishment, shall neither have been specifically provided for by any regulation;

Courts of cir-
cuit how to pro-
ceed in cases of
conviction and
discretionary
punishment,
not specifically
provided for
by any regula-

tion, or by the
Mohammedan
law.

regulation; nor by any stated penalty in the Mahomedan law; and the judge, before whom the trial may be held, shall consider the crime to have been established against the prisoner, and deserving of punishment; he shall, after consulting with the law officer, respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case, should be inflicted upon the prisoner, adjudge the prisoner to suffer such punishment as may appear adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal punishment of thirty-nine stripes; and imprisonment, with hard labor, for the term of seven years. If, in any instance, this degree of punishment appear to the judge of circuit insufficient, in a case not specifically provided for by the Mahomedan law; or the regulations; he shall transmit the trial, with his sentiments thereupon, to the court of Nizamut Adawlut."

The foregoing
provisions ex-
tended to the
court of Niza-
mut Adawlut,
with modifica-
tion of the
clause last spe-
cified.
R. LIII, 1803,
§ VII.

THE several provisions made by the above clauses for the guidance of the courts of circuit, and their law officers, in cases of discretionary punishment, were, by the three First Clauses of Section VII, Regulation LIII, 1803, extended to the court of Nizamut Adawlut, and the law officers of that court, with the following modification of the last clause specified.

Court of Niza-
mut Adawlut
how to proceed
in cases of dis-
cretionary pun-
ishment, not
specifically pro-
vided for by
the regulations,
or by any stated
penalty in the
Mohammedan
law.

" IN trials referred to the Nizamut Adawlut, under Clause Seventh, Section II, of this regulation, viz. when the crime of which the prisoner is convicted, and for which he is declared liable to discretionary punishment, shall not have been specifically provided for, either by the regulations, or by any stated penalty in the Mahomedan law, the judges of the Nizamut Adawlut, provided the offence be punishable at discretion under the Mahomedan law, and they shall be satisfied of the conviction of the prisoner, are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and

and consonant to the general principles of justice, on due consideration of all the circumstances of the case. The court shall at the same time propose to the Governor General in Council a regulation, to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for, either by the Mahomedan law, or by the regulations; and which may appear to call for an express denunciation of the penalty to be incurred by committing the same."

It has already been observed, that the provisions of the Mohummudan law for the punishment of high-way robbery cannot, according to the prevailing doctrines, be applied to robberies committed in any other place than on, or near, the high-way, at a distance from any inhabited place; and that, even with respect to these, the specific penalty is barred, if any one of the band of robbers be under age; or lunatic; or dumb; or a relation, within the prohibited degrees, of the person robbed or murdered; or if such person be not a Mosulman, or under the permanent protection of a Mohummudan government; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or its value be less than ten *Dirms* (between two and three Rupees) for the share of each robber. These distinctions being evidently repugnant to the principles of public justice; and the atrocious crime of gang-robbery, with frequent murder, maiming, burning, or other aggravating circumstances, continuing to prevail in many districts (especially within the province of Bengal, where the pusillanimous disposition of the inhabitants prevents, in general, their making any opposition to a numerous and armed banditti;) it became highly requisite that provision should be made for the more certain and adequate punishment of robbery, with or without murder, or other aggravating acts of criminality. The following rules

Recapitulation of provisions of the Mohummudan law concerning robbery; and necessity of making further provisions for the more certain and adequate punishment of robbery, with or without murder, or other acts of criminality.

were accordingly enacted by Sections III, IV, and V, Regulation LIII, 1803, for the court of circuit; and by the fourth clause of Section VII, of the same Regulation, were extended to the Nizamut Adawlut; the judges of which court were thereby “ authorized to adjudge the stated punishment, whatever may be the *futwa* of their law officers; provided that it shall declare the prisoner, or prisoners, to have been convicted of the crimes incurring the stated penalties; either on free and voluntary confession, or on the testimony of credible witnesses; or on strong circumstantial evidence (sufficient to establish *ghalibzun*, or violent presumption of guilt) and provided the judges of the Nizamut Adawlut shall see no cause to disapprove such conviction of the prisoner or prisoners; or to mitigate, or remit the specified punishment.

R. LIII, 1803,
§ III.
What persons
shall be deemed
guilty of the
crime of robbery by open
violence; and
how punishable
on conviction.

~~First~~ “ ANY person or persons, who shall, in the day or in the night, go forth with any offensive weapon, or in a gang with or without an offensive weapon, with the criminal intent of committing robbery, and shall, by force or intimidation, rob or attempt to rob any person, or persons, on or near a highway; or on a river, lake, or other water; or in or near a city, town, or village; or in any other place whatever; or shall attack by open violence, and rob, or attempt to rob, any dwelling house, or other house or building; or any tent, boat, or other receptacle of persons or property, in which there may be any person or property at the time of such robbery, or of such attempt to rob; shall be deemed guilty of the crime of robbery by open violence; (denominated in the Mahomedan law *Suruca-i-kobra*, and more commonly *Shubkhonee*, or *Dukytee*,) and on due conviction thereof, whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, shall be adjudged to suffer such of the penalties declared in the next section, as may be applicable to the case, viz. according as the robbery may be with, or without, homicide, wounding, maiming, or other personal injuries;

injuries; or with or without other circumstances of aggravation."

Second. "In such cases of robbery by open violence, the punishment of the offenders shall not depend upon the amount, value, or description of the property plundered. Nor shall any of the circumstances noticed in the preamble to this regulation, as barring a sentence of *Hud* under the Mahomedan law, in cases of highway robbery, nor any other provision in that law, be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clause of this section; or of murder, or other acts of criminality committed in the prosecution of such robbery; or of an intent to rob: provided, as in all other cases of criminal conviction and punishment, that the party convicted be adult, and of sound understanding, so as to render him a proper object of punishment."

The punishment not to depend upon the amount or value of the property plundered; nor to be affected by any of the circumstances which bar a sentence of *Hud* under the Mohummudan law; or by any provision in that law; if the party convicted be a proper object of punishment.

Third. "In all such cases, of conviction of robbery by open violence; or of murder, or other criminal acts, done in prosecution of such robbery, or of an intent to rob; if the law officer of the court of circuit declare the prisoner liable to discretionary punishment, the judge, before whom the trial may be held, is to proceed as directed in Clause Second, Section II, of this regulation. If the law officer declare the prisoner liable to suffer death under the Mahomedan law, the judge is to refer the trial to the court of Nizamut Adawlut, with his opinion, as directed by the existing regulations; or, if the law officer declare the prisoner liable to amputation of limb under the Mahomedan law, the judge is either to refer the trial for the sentence of the Nizamut Adawlut; or to commute the punishment and pass sentence against the prisoner, in conformity to the ensuing section; according as the degree of punishment to be adjudged, or any provision in the

Courts of circuit how to proceed, upon the fitness of their law officers, in such cases.

the regulations, may require a reference of the trial for the sentence of the Nizam ut Adawlut, or otherwise."

In cases of murder committed in the prosecution of robbery, what persons liable to a sentence of death.

§ IV. *First.* " ALL persons convicted of being the heads or leaders of a gang of robbers, by whom a murder may have been committed; or of having been actively concerned in the perpetration of such murder; or of any murder committed in the prosecution of robbery, or an intent to rob; or of having been present, aiding, and abetting when such murder was committed; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of such murder, in pursuance of a preconcerted plan to commit the same, or to commit robbery; shall be adjudged to suffer death."

In cases of wounding, or other personal injury, not occasioning homicide, or of arson or other aggravating act of criminality committed in the prosecution of robbery, what persons subject to imprisonment and transportation for life.

Second. " ALL persons convicted of being the heads or leaders of a gang of robbers, by whom any person may have been wounded, maimed, burnt, or subjected to other personal injury, torture or cruelty, not occasioning homicide; or by whom a dwelling house or houses, may have been set on fire; or any other criminal and aggravating act committed, in the prosecution of a robbery, or intent to rob; as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery, or intent to rob; or of having been present, aiding and abetting, when any such acts were committed; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same, or to commit robbery; shall be adjudged to suffer imprisonment and transportation for life. Moreover, any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime described in this clause; or without such repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the discretion allowed by the Mahomedan law in cases of *secasut*, may be punishable with death; and which may appear to the court of Nizamut

Or, in special cases, to a sentence of death.

Adawlut to render such heinous offenders deserving of capital punishment; shall be liable to a sentence of death."

Third. "ALL persons convicted of being the heads or leaders of a gang of robbers by whom a robbery may have been committed without homicide; and without any personal injury, or other act of aggravation, as specified in the preceding clause; or by whom any violent attempt shall have been made to commit such robbery, though not effected; as well as persons convicted of having been actively concerned in any such robbery, or attempt to rob; or having been present, aiding, and abetting at such robbery, or attempt to rob; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of such robbery, or attempt to rob, in pursuance of a preconcerted plan for this purpose; shall be adjudged to suffer imprisonment and hard labor for the period of fourteen years. The court of Nizamut Adawlut are further empowered to extend their sentences, to imprisonment and transportation for life, upon any leaders of gangs, or other offenders, convicted of a repetition of the crime described in this clause; or without such repetition, if from proof of the notorious bad character of the party convicted, or on consideration of any other circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, and evince the danger of his future depredations, if set at liberty, it shall, in the judgment of that court, be just and necessary to inflict a more severe punishment than imprisonment and labor for the term of fourteen years."

In cases of robbery, or an attempt to rob, without homicide, personal injury, or other act of aggravation, what persons liable to imprisonment and hard labor for fourteen years.

Or, in special cases, to imprisonment and transportation for life.

Fourth. "PERSONS convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the provision contained in the preceding clause, shall be adjudged to suffer imprisonment and hard labor for such period, not

Persons going forth to rob, but apprehended before they have committed robbery, or made any violent attempt; how punishable on conviction.

exceeding seven years, as the circumstances of the case may appear to merit."

Provision for a mitigation of the punishment stated in the foregoing clauses, under any extenuating circumstances, or if the example appear sufficient without extending the full punishment to the whole of the prisoners convicted.

Fifth. "PROVIDED with respect to all the crimes, and degrees of punishment, specified in the several clauses of this section; if, from any extenuating circumstances, which may appear on the trial before the courts of circuit, or court of Nizamut Adawlut, the stated punishment shall, in any particular instance, appear too severe; or if on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more of them, the example shall appear sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted; it shall be competent to the court of Nizamut Adawlut, or to the courts of circuit, if the trial be not referrible under the regulations to the Nizamut Adawlut, to mitigate the sentence, in such cases, as may be deemed just and expedient."

Further provision for the cases of any prisoners who may appear proper objects of mercy and pardon.

Sixth. "THE courts of circuit are also to report to the Nizamut Adawlut, and that court, if it appear necessary, will report to the Governor General in Council, the case of any prisoner or prisoners, who may appear proper objects of mercy and pardon; or if the punishment to which they are sentenced shall not have been adjudged under any provision of the Mahomedan law, or the regulations, expressly requiring the same, the court of Nizamut Adawlut, as already authorized, may remit the punishment, and order the discharge of the prisoner, without reporting the case for the orders of the Governor General in Council."

What sentences to be passed by the criminal courts in case of secret theft, or larceny, without open violence; when accompa-

§ V. *First.* "No part of the preceding section shall be considered applicable to secret theft; or larceny without open violence; (*Suruc-i-sogra*); whether accompanied with burglary, (*Nuccub-zunee*), or simple theft from the person or house,

house, unaccompanied with any aggravating circumstance. In such cases the Mahomedan law, with the modifications of it in the existing regulations, and the rules contained in Section II, of this regulation, when the prisoner may be declared liable to discretionary punishment, shall govern the sentences of the courts of circuit; as well as of the Nizamut Adawlut in any cases referred to that court."

armed with bar
glary, or simple
theft from the
person or house.

Second. " BUT in the case of a burglarious entry, or any entry by night, into a dwelling house, or other house; or into a tent, boat, or other receptacle of persons and property, for the purpose of committing theft therein; although such entry may have been made in the first instance without any open violence; if any person or persons shall, after having entered, be guilty of murdering, wounding, maiming, torturing, or otherwise doing personal injury to any person or persons, or of any other criminal act of violence, done in the prosecution of the original intention to commit theft; the parties convicted, as principals or accomplices, of such murder, wounding, maiming, or other acts of criminality and violence, done in the prosecution of theft, shall be liable to the same punishment as has been declared in the preceding section, for the same acts of criminality committed in prosecution of robbery by open violence: and the several provisions contained in that section, as well as in Section III, of this regulation, are accordingly declared equally applicable to the cases herein specified."

But murder,
wounding, or
any other act of
violence, done
in prosecution
of an original
design to com-
mit theft de-
clared liable to
the same penal-
ties, as if done
in prosecution
of robbery by
open violence.

CORPORAL punishment by stripes, which had formerly constituted part of the usual punishment for robbery, in cases short of death, not having been specified in the rules above quoted; and instances having occurred in which the village watchmen, who are bound to assist the police officers in protecting the inhabitants of the country, and their property, from robbery, were found to have been concerned in the perpetration of this crime;

Reasons for ad-
ding corporal
punishment by
stripes, to the sta-
ted penalties for
robbery, in cas-
es short of
death; and for
subjecting any
village watch-
men or officers
of police, con-
victed of being
concerned in,
or having con-
curred at robbery.

y, to more ex-
emplary pun-
ishment, in
proportion to
the aggravated
criminality.

crime; strong grounds of suspicion also having appeared that even some of the public officers upon the police establishments had connived at the commission of robbery, or at the escape of persons residing within their jurisdictions, who from information, or notoriety, were known to be robbers; the following rules were enacted by Regulation III, 1805, for subjecting offenders, convicted of so highly criminal and dangerous a violation of duty, to more exemplary punishment, proportionate to their aggravated criminality, and its danger to the community; as well as for enabling the criminal courts to adjudge corporal punishment, in all cases of conviction of robbery, when it may appear proper to inflict such punishment."

Regulation III,
1805. In what
cases of robbery
the criminal
courts may ad-
judge corporal
punishment by
stripes of the
corah, and to
what extent.

§ II. " IN all cases of conviction of the crime of robbery by open violence, as defined in Clause First, of Section III, Regulation LIII, 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted may not be sentenced to suffer death; the court of circuit, before whom the offender may be convicted, and the court of Nizamut Adawlut, in trials referred to that court, shall be competent to adjudge corporal punishment, not exceeding thirty-nine lashes with a corah, in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for the period of fourteen years, prescribed by Clauses Second and Third of Section IV, Regulation LIII, 1803; whenever, on consideration of the nature of the case, it may appear proper to inflict such additional exemplary punishment."

Persons convicted of going forth to commit robbery, but apprehended before the commission of it, also declared liable to stripes, and to what extent.

§ III. " PERSONS convicted of the crime provided for by Clause Fourth, of Section IV, Regulation LIII, 1803, viz. of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose; and de-
clared

clared by the clause abovementioned, liable to imprisonment and hard labor for such period, not exceeding seven years, as the circumstances of the case may appear to merit, are further hereby declared liable to corporal punishment, not exceeding thirty lashes with a corah, in addition to, or in commutation of, the whole or part of the imprisonment provided for by the clauses above cited; whenever it may be expedient, for the sake of example, or to prevent a lengthened imprisonment of the prisoner, to the court of circuit before whom he may be convicted, or to the Nizamut Adawlut in any cases referred to that court."

§ IV. " If any pyke, chokeedar, pasban, dosaad, nigabaan, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any other person, for the protection of villages, houses, persons, or property, and consequently required by the regulations to assist the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officer of whatever description, (whether a police darogah, or tchseeldar entrusted with the charge of the police, a city or town cutwal, or a jemadar, mohrir, burkundofs, piadah, or other person employed under the zillah or city magistrates, the police darogahs and tchseeldars, or under any other officers of the police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police; connected with the prevention of public offences;) shall be convicted of the crime of robbery by open violence, as defined in Clause First, of Section III, Regulation LIII, 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted, shall not be liable to suffer death, under Clause First, of Section IV, Regulation LIII, 1803, as an

Village watchmen, or guards, of whatever denomination, and all police officers, of whatever description, convicted of robbery by open violence, and not liable to suffer death under the First Clause of § IV, R. LIII, 1803, declared liable to the special punishment for aggravated criminality, provided for by the Second and Third Clauses of that section.

accomplice in murder, as well as robbery ; it is hereby declared, that he shall be held and expressly deemed to be within the provisions contained in Clauses Second and Third of that Regulation, whereby the Nizamut Adawlut are authorized to pass sentence of death, in cases of aggravated criminality, which may appear to deserve it, although the robbery may not have been attended with actual homicide ; or where the robbery may have been without any personal injury or other act of aggravation, to extend the sentence of that court, from imprisonment and hard labor for fourteen years, to imprisonment and transportation for life ; if on consideration of any circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, the infliction of such more severe punishment shall appear just and necessary. Under this declaration any watchman, guard, or police officer, as described in the present section, who may be convicted of having been present, aiding and abetting, at a robbery by open violence, or at an attempt to commit such robbery ; or though not present, of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob, will be liable to suffer death, on the sentence of the court of Nizamut Adawlut, according to the regulations, if in the prosecution of such robbery, or attempt to rob, any person shall be murdered, wounded, maimed, burnt, or subjected to other personal injury, torture or cruelty ; or any dwelling house shall be set on fire ; or other criminal and aggravating act committed ; or will be liable to a sentence of corporal punishment, and imprisonment and transportation for life, by the court of Nizamut Adawlut, if the prosecution of such robbery, or attempt to rob, shall not have been attended with homicide, personal injury, or any of the other aggravating acts above specified. It is hereby further declared, that any clear and direct connivance on the part of a watchman, guard, or police officer, as described in this section, whereby a gang of robbers may have

Connivance of
a watchman,
guard, or police
officer, where-
by a gang of
robbers may be
enabled to com-

have been enabled to commit any of the crimes above stated, shall, if duly established, subject the offender to the same penalty, as he would have been liable to, if actually present, aiding and abetting; or, though not present, if he had procured and caused the perpetration of the offence, by hire, counsel, or command."

not robbery or other act or criminality; how punishable on conviction.

V. " IF any watchman, guard, or police officer, as described in the preceding section, shall be convicted of going forth with a gang of robbers for the purpose of committing robbery, or of conniving at the going forth of a gang of robbers for such purpose, but he, or they, may be apprehended before they have committed robbery, or made any violent attempt for the purpose; the watchman, guard, or police officer, so convicted, shall be liable to corporal punishment, and imprisonment, with hard labor, for such period, not exceeding fourteen years, as the circumstances of the case, may, in the judgment of the court of circuit, before whom he is convicted, appear to merit; or if that court shall, in any particular case, deem the prisoner deserving of more exemplary punishment, they shall refer the trial to the court of Nizamut Adawlut, who are authorized, if sufficient ground appear, to extend the sentence to corporal punishment and imprisonment, with transportation for life."

A village watchman, or guard, or any police officer, convicted of going forth to commit robbery, or conniving at a gang of robbers going forth, to what punishment liable, if the robbery be not committed; nor any violent attempt made, for the purpose.

§ VI. " The explanation contained in the two Clauses of Section V, Regulation LIII, 1803, respecting the distinction to be observed in cases of secret theft, or larceny, without open violence, and of criminal acts of violence done in prosecution of the original intention to commit theft, shall be applied, in like manner, to the several provisions contained in the present regulation. But if any police officer, or any guard or watchman, bound to assist the officers of police, as described in Section IV of this regulation, shall be convicted of theft, or of larceny and burglary, though without any act of open violence, or of

Any police officer, guard, or watchman, convicted of theft, or of larceny and burglary, without any act of open violence, or of connivance at the perpetration of such crime, to what punishment liable.

clear and direct connivance at the perpetration of such crime, he shall be liable to suffer such aggravation of punishment as the court of circuit, before whom he may be convicted, or the Nizamut Adawlut, if the case be referrible to that court, shall deem adequate to his offence; not exceeding the limitations prescribed by Clause Seventh, of Section II, and Clause Third, of Section VII, Regulation LIII, 1803, for cases not specifically provided for by the regulations, or by any stated penalty in the Mahomedan law."

Rule for commuting mutilation to imprisonment and hard labor. Regulation IX, 1793, Section LI; extended to Benares by Regulation XVI, 1795, Section XXII; and re-enacted for ceded provinces by Regulation VII, 1803, Sections XX and XXI.

By Section LI, Regulation IX, 1793, (extended to Benares, by Section XXII, Regulation XVI, 1795, and re-enacted for the ceded provinces, by Sections XX and XXI, Regulation VII, 1803,) it is provided that no criminal shall suffer the punishment of mutilation. If a prisoner be declared by the futwa of the law officers liable to the penalty of losing two limbs; instead of being made to undergo such punishment, he is to be imprisoned and kept to hard labor for fourteen years: or, if declared liable to lose one limb, he is, in lieu of such punishment, to be imprisoned and kept to hard labor for seven years.

Rule for admitting the evidence of witnesses who are not of the Mohummudan religion, and courts of circuit how to proceed in such cases. Regulation IX, 1793, Section LVI, extended to Benares by Regulation XVI, 1795, Section XXII; and re-enacted for ceded provinces by Regulation VII, 1803, Section XXV.

By Section LVI, Regulation IX, 1793, (extended to Benares by Section XXII, Regulation XVI, 1795, and re-enacted for the ceded provinces by Section XXV, Regulation VII, 1803,) it is further declared that the religious persuasion of witnesses shall not be considered a bar to the conviction or condemnation of the prisoner. When the evidence given on a trial may be deemed inadmissible, on the ground of the persons giving such evidence, not professing the Mohummudan religion, the law officers of the courts of circuit are to declare what would have been their futwa, supposing such witnesses to have been Mohummudans. The courts of circuit are not to pass sentence in such cases, but are required to transmit the record of the trial, with the futwa of their law officers, to the Nizamut Adaw-

lut; which court, if it approve the proceedings held on the trial, is empowered to pass such sentence as would have been passed, had the witnesses, whose testimony is deemed inadmissible, been of the Mohummudan persuasion.

THE city of Benares being considered the principal seat of the Hindoo religion, which holds sacred the life of a Brahmin, it is provided by Section XXIII, Regulation XVI, 1795, (originating in an order of Government passed on the 8th October 1790, but having operation in the province of Benares only,) that “no Brahmin shall be punished with death. “In cases in which a Brahmin shall be declared by the law “liable to suffer death, he shall in lieu of such punishment, be “subject to be sentenced by the Nizamut Adawlut, to transpor- “tation. The court of circuit is not to pass sentence in any “such trials, but is to forward them to the Nizamut Adawlut, “for their final sentence.”

Brahmins are
excepted from
capital punish-
ment in the pro-
vince of Benares.
Reg. XVI,
1795, & XXIII.

How punis-
able, when de-
clared liable to
a legal sentence
of death.

THE reverence paid by the Hindoos to Brahmins, and the injury to civil and credit, which ensues from being the cause of their death, have, in some parts of the province of Benares, been converted into the means of setting the laws at defiance. On the approach of a public officer to serve any judicial or revenue process, or to exercise any coercion on the part of government, over the Brahmins in question, they have been known to lacerate their bodies with knives or razors; or to swallow or threaten to swallow poison, or a powder declared to be such; or to construct a circular enclosure called a *Koorb*, in which they raise a pile of wood or other combustibles, and place within the area an old woman, with a view to sacrifice her by setting fire to the *Koorb*; in which case it is believed that after death she will become the tormentor of those who occasion her being sacrificed. It has also been a practice with the Brahmins referred to, on their not obtaining speedy relief for any loss or disappointment, and upon

The reverence
paid by the
Hindoos to Bra-
hmins prevented,
in some parts of
the Benares pro-
vince, to a de-
fiance of the
laws.

An enclosure
called a *Koorb*,
sometimes con-
structed for the
sacrifice of an
old woman.

Their females
and children
also at times
destroyed, as
revenge for
personal arrests,
or other injuries.

any public process being issued against them, to cause their women and children to sit down in the view of the officer charged with such process; to brandish their swords; and threaten to behead or otherwise destroy their females or children on the nearer approach of the officer; and instances have occurred in which, from resentment at being subjected to arrest or other coercion, they have actually put such menaces into execution. A proclamation was issued throughout the province of Benares, on the 7th July 1799, for the purpose of putting a stop to the murder of women and children in the manner above described; and provisions for the same purpose, as well as for preventing the construction of a *Koorh*, and the commission of any act of violence, or the threat of it, under the circumstances stated, are contained in the ten first sections of Regulation XXI, 1795. The magistrates, on receiving information that a Brahmin has established a *Koorh*, or has prepared to maim, wound, or destroy any of his women or children, as above described, is to require the Brahmin, by a written notice, to remove the *Koorh*, and desist from any act of violence towards his women or children; assuring him, at the same time, that on his compliance, due enquiry will be made concerning any subject of discontent. If this notice, (which is to be served through some relation or friend of the Brahmin; or in default of such by a single Hindoo peon;) shall not prove effectual, the magistrate is to issue a warrant, to be executed by peons of the Mahomedan religion, for apprehending the Brahmin, and on his appearance is to proceed as in other charges of a criminal nature, for investigating the truth of the facts alleged; and bringing the prisoner to trial, if there appear grounds for it, before the court of circuit. If that court judge the prisoner convicted of having been principally concerned in constructing a *Koorh*, or in preparing to wound or slay any women or children, the court are to sentence him to the payment of a fine, equal to

Proclamation issued in 1799, to put a stop to the murder of women and children, in the manner described; And provisions for the same purpose, as well as for preventing the construction of a *Koorh*, and the commission of any act of violence, or the threat of it, under the circumstances stated, included in the ten first sections of B. R. XXI, 1795. The magistrates how to proceed in such cases.

Penalties to be imposed by the criminal courts on conviction of a person who has been convicted as principal, or accomplice in constructing a

the estimated amount of his annual income; or of a fine equal to one fourth of such amount, if he be convicted, to the court's satisfaction, of having been concerned as an accomplice only. Such sentences are to be transmitted within ten days to the Nizamut Adawlut, which court may order any mitigation of the fines imposed, that it shall judge proper; but in the meantime the sentence of the court of circuit is to be considered in force; and carried into effect by imprisonment, unless security be given for payment of the fine adjudged, within six months. The person convicted is also, previously to his enlargement, to give satisfactory security that he will not commit the like offence in future. It is further provided, that the actual burning to death, or otherwise killing, any person by setting fire to a *koorb*, as well as the actual putting to death of any woman or child by a sword, or other offensive weapon, in the manner above described, shall be punishable as murder; and that in the latter case the family of any Brahmin, convicted of murder, shall be liable to banishment, and his estate to forfeiture. The wounding any woman or child on account of a real or supposed injury, as stated, is likewise declared punishable by transportation. The provisions for these purposes, with restrictions whereby the sentence must, in all cases, be reported for confirmation to the court of Nizamut Adawlut, and may be mitigated, at the recommendation of that court, by the Governor General in Council, are included in Sections VII, VIII, IX, and X, of Regulation XXI, 1795, to the following effect.

§ VII. If any Brahmin or Brahmins, on account of any discontent or alarm, well or ill founded, shall establish a *koorb*, in which any person or persons shall, at any period from its construction until its removal, be burnt to death, or otherwise lose their lives, in consequence of such Koorhs being set fire to, by any person whomsoever; the Brahmin or Brahmins who shall have caused the construction thereof, shall be held chargeable

koorb, or in preparing to wound or slay any woman or children.

The actual burning to death, or otherwise killing any person in the manner described, is punishable as murder.

The family of any Brahmin convicted of murdering a woman or child as stated, is liable to banishment, and his estate to forfeiture.

The wounding any woman or child, as stated, is likewise declared punishable by transportation.

Provisions for these purposes, included in B. R. XXI, 1795, § VII, VIII, IX, and X.

Brahmins establishing a *koorb* in which any persons may be put to death, and person employed, or aiding in setting fire thereto, how to be proceeded against.

chargeable with, and made amenable for, the crime of murder; as well as the party or parties who may have been immediately employed, or aided, in setting fire to the pile or combustibles in question; and upon proof of the fact to the satisfaction of the court of circuit, such Brahmin or Brahmins and such person or persons setting fire to the Koorh, shall be sentenced, on trial before the said court, to suffer the punishment of death, in the same manner as if they had committed and been convicted of *kull-umd*, or premeditated murder, according to the doctrines of the Mahomedan law; and with a view to render the example as public as possible, such sentence (whether consistent with the *futwah* of the Mahomedan law officers, or otherwise,) is in this case, to be accordingly formally passed by the court of circuit on the Brahmin or Brahmins thus convicted; but it is to be at the same time explained to the party or parties thus condemned, as it is also hereby expressly provided, that all such trials, and the sentences passed, are by the court of circuit to be submitted (in like manner as is prescribed in Section XLVII, Regulation IX, 1793,) to the Nizamut Adawlut; and the party or parties, condemned under this section, are to remain in jail to await the final judgment of that court; and if the Nizamut Adawlut shall approve of the condemnation, it shall order the Brahmin or Brahmins in question to be conveyed to Calcutta, to be thence transported for life, in conformity to Section XXIII, Regulation XVI, 1795, which establishes this commutation for the legal punishment of murder perpetrated by Brahmins within the province of Benares; or, if the court of Nizamut Adawlut shall see cause for not proceeding pursuant to the sentence passed by the court of circuit, either in respect to the Brahmin or Brahmins who may have caused the construction of the Koorh, or to the party or parties who may have been employed, or aided in firing it, they shall submit the case or cases to the Governor General in Council, and either recommend a pardon, or such other

other commutation by way of mitigation of the punishment, as to the said court may seem proper."

§ VIII. "If any Brahmin or Brahmins, under the circumstances, and in the manner, described in the preamble to and the following sections of this regulation, or under such circumstances, and in such manner, as shall be substantially similar thereto, with a sword, or other offensive weapon, or otherwise, shall actually wound his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury committed towards him or them, by any aumils, tehseeldars, or other officers, or servants employed in the revenue or judicial departments; or shall so wound any of his or their own women or children, or any other woman or child, on account or in resentment of, his or their differences with any individual; he or they shall, for such act or acts, be sentenced by the court of circuit to transportation, subject to the same reference to the Nizamut Adawlut, and to the like commutation of the punishment, or pardon, as in the cases referred to in Section VII."

Brahmins wounding any women or children under the circumstances stated, how to be proceeded against.

§ IX. "If any Brahmin or Brahmins, under the circumstances, and in the manner, described in the preamble to and subsequent sections of this regulation, or under such circumstances, and in such manner, as shall be substantially similar thereto, with a sword or other offensive weapon, or otherwise, shall actually put to death his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury, committed towards him or them, by aumils, tehseeldars, or any other officers, or servants, employed in the revenue or judicial departments; or shall so put to death any of his or their own women or children, or any other woman or child, on account or in resentment of, his or their differences with any individual; he or they shall be tried for such homicide, and on proof of

Brahmins putting to death any women or children, with a sword or otherwise in the manner described, how to be proceeded against.

the fact or facts, be accordingly sentenced by the court of circuit to capital punishment, subject to the same reference to the Nizamut Adawlut, and to the like commutation of the punishment, or pardon, as in the cases referred to in Section VII; and the families of any Brahmin or Brahmins found guilty of murder under this section, shall, according to the order of the Governor or General in Council under date the 17th of June 1789, and the publication made in conformity to it by the Resident at Benares, under date the 7th of July of the same year, be banished from the province of Benares, and the Company's territories; and his and their estates in land shall be forfeited, and disposed of as to Government shall seem proper; and accordingly, the court of circuit is required to subjoin this order to all sentences that they may pass on Brahmins for murder under this section, at the same time reporting such sentence and order to the Nizamut Adawlut, together with as accurate an account as they may be able to procure, of the number, sex, and age, of the persons composing the family of such Brahmin or Brahmins, and annexing their opinion how far it may be advisable or otherwise, rigorously to enforce the banishment of the family of such Brahmin or Brahmins, or to confirm, or mitigate, or annul, the order for the forfeiture of their real property; and the Nizamut Adawlut, on consideration of this sentence and order, and of the opinion of the court of circuit, shall either wholly confirm, or recommend to the Governor General in Council such mitigation of the said sentence and order, as shall appear to them proper; and in all cases where the forfeiture of the landed property of such Brahmin or Brahmins, and that of his and their family, shall be confirmed by the Nizamut Adawlut, the said court is to advise the Governor General in Council thereof, nor shall such sentence be carried into execution as far as regards the forfeiture of the landed property, without an order from the Governor General in Council, approving such part of the sentence, and directing in what manner the lands thus forfeited shall be disposed of."

Rule for banishment of their families, and forfeiture of their landed estates.

Subject to confirmation of Nizamut Adawlut, and to mitigation of sentence by the Governor General in Council, at the recommendation of that court.

§ X. " In the exercise of the discretion vested in the Nazamut Adawlut by Section IX, of recommending to the Governor General in Council, the mitigation of sentences and orders passed by the court of circuit, under the said section, it shall be a rule, that whenever the Governor General in Council shall in consequence deem it proper to limit the banishment either to the party or parties committing the murder, or to a certain number only of his or their family or families; no confiscation or forfeiture of the landed property shall in such instances take place, but the same shall be entirely left in the possession, and as the property, of those members of the family who shall be exempted from banishment."

State not to be forfeited, if any part of the offender's family be exempted by Government from transportation.

ANOTHER practice resorted to by Brahmins, as well as occasionally by other descriptions of persons, is called *Dhurna*. The object of it is to realize any claim of right, such as the recovery of a debt, without having recourse to judicial process; or to extort a donation; for which purpose the demandant, providing himself with poison, or with some offensive weapon, takes post at the door of the person upon whom he proposes to enforce his demand; and threatens to remain fasting until his requisition be complied with; or to destroy himself if any molestation be offered. In this case it is understood to be incumbent upon the party, who is the cause of the Brahmin's fasting, to abstain also from nourishment, until the latter be satisfied; and even ingress and egress, to and from his house, is in a great degree prevented. To put a stop to this practice, so open to abuse, and to become the means of undue exaction, a proclamation was issued in the province of Benares on the 22d December 1792; and a rule of proceeding was established by Sections XI and XII, Regulation XXI, 1795, (extended to persons of all casts, as well as Brahmins, by Section VI, Regulation VIII, 1799,) whereby any

Brahmin

Notice or another practice by Brahmins and others, called *Dhurna*.

Proclamation issued to put a stop to this practice in 1792.

And rule of proceeding established by B. R. XXI, 1795, § XI and XII, extended to persons of all

casts, as well as
Brahmins. Lx
§ VI, R. VIII,
1799

Brahmin sitting dhurna may be apprehended by a warrant from the magistrate, and on conviction before the court of circuit, may be sentenced by that court "to be expelled from the province of Benares and to forfeit all title to the right or claim, for realizing of which the misdemeanor shall have been committed. But this sentence is not to be carried into execution until it shall have been reported by the court of circuit to the Nizamut Adawlut; and it shall have been either wholly confirmed, or directed to be enforced, under such mitigation as to the expulsion from the province, or to the forfeiture of the right or claim of the prisoner or prisoners to the property for which he or they sat dhurna, as to the said court shall seem proper." In charges of dhurna a *Bewusta*, or exposition of the Hindoo law, is to be taken from the Pundit of the court (instead of a *futwa* from the Mohummudan law officer) as to whether the facts in evidence amount to proof of the prisoner's having committed dhurna; and it is explained by Section VI, Regulation VIII, 1799, that "the pundits, in delivering the *Bewusta* required from them, are not to consider themselves restricted to the exact definition of dhurna in the *Shaster*; but are to regard the common construction of that term and practice, and the circumstances generally understood to denote it, whether described in the *Shaster* under the technical denominations of *dherm*, *bebhar*, *chullona*, *achrit*, or any other mode of duress practiced by individuals without authority from the magistrate, for the recovery or extortion of money." The rules enacted for the prevention of Dhurna, in the province of Benares, were re-enacted for Bengal, Bahar, and Orissa, by Regulation V, 1797, and for the ceded provinces by Sections IX and X, Regulation III, 1804, with the following modifications. After the evidence upon the trial has been closed before the court of circuit, the judge, before whom the trial is held, is to transmit it to the sudder station of the division, where the other judges of the court of circuit are to take a

Bewusta

The rules for prevention of *Dhurna*, in the province of Benares, re-enacted with modifications, for Bengal, Behar, and Orissa, by R. V, 1797; and for the ceded provinces, by § IX and X, R. III, 1804.

Bewusla from the Pundit of the provincial court, and in the event of the prisoner's conviction, are to sentence him to forfeit all title to the right or claim for the realization of which the misdemeanor shall have been committed ; and to pay a fine to Government, proportionate to his situation and circumstances in life, provided that the amount shall not exceed in any case the sum of one thousand sicca rupees, and under the general restriction, with respect to fines, contained in Section III, Regulation XIV, 1797, and Section XXXIX, Regulation VII, 1803, that a definite period of imprisonment be fixed, as equivalent to the fine, in the event of its not being paid. In instances attended with great aggravation, the prisoner may be further sentenced to confinement in the dewanny jail for a period not exceeding one year ; and in all cases the sentence of the court of circuit, if it correspond with the *Bewusla* of their Hindoo law officer, may be carried into effect without reference to the Nizamut Adawlut. The whole of the courts of circuit are moreover authorized, although the prisoner may not be legally convicted of Dhurna, if they should be of opinion from the evidence before them, that he did in fact commit that offence according to the common construction of the term, to take from him an engagement declaring that if he shall again perform any act of a nature so similar to Dhurna as shall on his prosecution before the court of circuit be deemed by the judge or judges of that court equivalent to Dhurna, he will be liable for such second offence, to suffer the full penalty of Dhurna.

A BARBAROUS custom, which is supposed to have originated in principles of family pride, and apprehension of dishonor, from inability to provide for daughters by a suitable marriage, was formerly prevalent amongst the tribe of Raj-comars, inhabiting the borders of the province of Benares, as well as some parts of the ceded provinces, of destroying their infant female children, by suffering them to perish for want of

B b b

sustenance .

Barbarous custom among the tribe of Raj-comars, of destroying their infant female children.

Obligation taken from the Raj-comars, in Benares; with a view to the discontinuance of this practice, in 1799.

And rule contained in B. R. XXI, 1795, § XIII, as well as in § XI, R. III, 1804, for the ceded provinces, whereby any Raj-comar killing his child, in the manner stated, is declared liable to be tried, on a charge of murder.

Proclamation issued, and rule enacted by § VI, R. IV, 1797, (re-enacted for the ceded provinces by § XXXIV, R. VII, 1803,) to prevent persons being put to death on the ground of their practising sorcery.

Inducement. With a view to prevent the continuance of the infanticide practice in the province of Benares, an obligation was taken from the Raj-comars referred to, in the month of December 1799; and by Section XIII, Regulation XXI, 1799, for Benares as well as by Section XI, Regulation III, 1804, for the ceded provinces, any Raj-comar who shall designedly cause the death of his female child, by prohibiting its receiving nourishment, or in any other manner, is declared liable to trial, as in other criminal cases, before the court of circuit and Nizamut Adawlut, on a charge of murder.

In consequence of two men of the sutar cast having been convicted of the murder of five women, said to have practised sorcery, a proclamation was published in February 1792, and September 1794, and enacted into a Regulation for the provinces of Bengal, Bahar, Orissa, and Benares, by Section VI, Regulation IV, 1797, (re-enacted for the ceded provinces by Section XXIV, Regulation VII, 1803,) to the following effect. "If any person or persons of the sutar cast, or of any other cast or persuasion, within the British territories, shall hereafter put any person to death, on the ground of his or her being versed in, and practising sorcery; such person or persons, on being convicted of the crime, shall be held guilty of murder, and shall be invariably punished accordingly: and if any persons shall either actually form themselves into an assembly, for the purpose of trying any man or woman on a charge of witchcraft; or any other charge; or shall cause such assemblies to be held; and any person or persons shall in consequence be put to death; they shall be considered to be principals, or accomplices, in the murder, and be dealt with accordingly."

Practice of sacrificing children by exposing them to be drowned, or devoured by sharks.

In the year 1802, it was represented to Government, that a practice of sacrificing children, by exposing them to be drowned, or to be devoured by sharks, continued to prevail at the

Island

Island of Saugur, and at the other places on the river Ganges. At Saugur especially, such sacrifices were said to be made at fixed periods, namely, the day of full moon in November and in January ; at which time also grown persons have devoted themselves to a similar death. This practice was stated to arise from superstitious vows ; but, on enquiry, was not found to be sanctioned by the Hindoo law ; nor countenanced by the religious orders ; or by the people at large : nor was it, at any time, authorized by the Hindoo or Mahomedan Governments in India. The persons concerned in the perpetration of the crime were therefore, on conviction, liable to the punishment of murder ; but for general information, as well as for the more effectual prevention of the practice in future, it was publicly declared by Section II, Regulation VI, 1802, that “ If
 “ any person or persons shall wilfully, and with the intention
 “ of taking away life, throw or cause to be thrown, into the
 “ sea, or into the river Ganges, or into any other river or
 “ water, any infant, or person not arrived at the age of maturity, with or without his or her consent, in consequence
 “ whereof such person, so thrown into water, shall be drowned,
 “ or shall be destroyed by sharks or by alligators, or shall
 “ otherwise perish ; the person or persons, so offending, shall
 “ be held guilty of wilful murder ; and on conviction, shall
 “ be liable to the punishment of death ; and all persons, aiding or abetting the commission of such act, shall be deemed
 “ accomplices in the murder, and shall be subject to punishment accordingly.” It was further declared by Section III, of the same regulation, that “ If a child, or any person
 “ not arrived at maturity, be thrown into water, as stated in the
 “ preceding section, and be rescued from destruction, or by
 “ any means escape from it, the persons, who shall have been
 “ active in exposing him or her to danger of life, and all
 “ aiders and abettors of such act, shall be held guilty of a high
 “ misdemeanor ; and on conviction, shall be liable to such
 “ punishment as the courts of circuit, under the futwah of
 their

Declaration
 made by § II,
 R. VI, 1802,
 to prevent the
 continuance of
 this practice
 Subject to capital
 punishment
 if the infant be
 drowned or destroyed.

§ III.
 Or punishable
 as a high misdemeanor, if
 the infant be
 thrown into
 water, and rescued,
 or escape.

§ IV.

Magistrates further required to be vigilant, in preventing a continuance of this practice.

“ their law officers, may judge adequate to the nature and “ circumstances of the case.” The magistrates of districts, wherein the sacrifice of children had been practised, were required by Section IV, of the regulation abovementioned, to be vigilant in preventing the continuance of the practice; and to cause the foregoing provisions to be, from time to time, proclaimed at the places and periods where, or when, such sacrifices had heretofore been effected.

Court of Nizamut Adawlut empowered to grant relief to prisoners confined under sentences of the Naib Nazim, of the former criminal courts in Benares, and of the courts of circuit established since 1790, for the payment of the price of blood, restoration of stolen property; pecuniary compensation to individuals, or fines to government. R. XIV, 1797, §. II.

It appearing that many prisoners, convicted of crimes and misdemeanors before the late Naib Nazim, the former criminal courts in the province of Benares, and the courts of circuit established since the year 1790, were in confinement under sentences for the payment of the price of blood; the restoration of stolen property, or its value; pecuniary compensation and damages to the parties injured by them; or fines to government; and that such sentences, from inability of the prisoners to comply with the terms of them must, if left to take their course, frequently operate as judgments of imprisonment for life; or for a period greatly out of proportion to the offences committed; it was judged proper to vest the court of Nizamut Adawlut with powers to grant relief to prisoners so circumstanced. That court was accordingly authorized by Section II, Regulation XIV, 1797, to require from the several magistrates, reports of the cases of all prisoners in their custody, under sentences of the nature above mentioned; and upon receiving the same, to grant such relief to the prisoners as they should consider each case, in justice, to require. Individuals, having claims on the prisoners so relieved, were permitted to prefer them to the magistrates; who were directed to report them, with their sentiments, for the consideration of the Nizamut Adawlut; and the decision of the Governor General in Council. To prevent a recurrence of similar sentences, and also to mark more clearly the distinction between the courts of civil and criminal jurisdiction, it was further

Rule enacted to prevent a recurrence of similar sentences, and to mark more clearly the distinction

ther enacted by Section III, Regulation XIV, 1797, (re-enacted for the ceded provinces by the First Clause of Section XXXIX, Regulation VII, 1803,) that “ after the promulgation of this “ regulation, no pecuniary compensations, nor sums as dama- “ ges, shall be adjudged to, or be recoverable by individuals, “ in any criminal prosecution; nor shall any fines be impo- “ sed by any court of criminal jurisdiction, save and except “ to the use of government; and whenever a fine to the use “ of government shall be imposed, the court which may pass “ the sentence, shall at the same time, weighing all the cir- “ cumstances of the case, fix a definite period of imprison- “ ment, to be held as equivalent to the fine, at the expiration “ of which the persons convicted shall be discharged, al- “ though they should have omitted to pay the fine. The “ imprisonment awarded by the courts of circuit under this “ section, as an equivalent for fines imposed by them, shall “ be temporary in all cases, and not for life; and their sen- “ tences shall be executed without reference to the Nizamut “ Adawlut.” It was likewise provided by Section IV, Regu- lation XIV, 1797. (and by the Second Clause of Section XXXIX, Regulation VII, 1803, for the ceded provinces) that “ whenever the law officers of the courts of circuit shall “ declare prisoners liable to diyut, or pecuniary fines of any “ kind, for any other acts than murder, and the several de- “ scriptions of homicide specified in Section III, Regulation “ IV, 1797, the courts of circuit shall, at their discretion, “ commute such diyut, or fines, to imprisonment, for such “ period as they may think adequate to the offence; and “ their sentences in such instances shall be carried into execu- “ tion without reference to the Nizamut Adawlut, if for “ temporary imprisonment; or referred to that court, if for “ imprisonment for life, which shall at its discretion confirm “ the said sentences, or mitigate or entirely remit the im- “ prisonment awarded.” Provision was at the same time made by Sections VII and VIII, Regulation XIV, 1797, (and

distinction between
the civil and
criminal courts.

R. XIV, 1797,
§ III; re-enacted for ceded
provinces by
First Clause of
XXXIX, R.
VII, 1803.

No pecuniary
compensation to
be adjudged to
individuals, in
any criminal
prosecution.

And where a
fine to govern-
ment is impo-
sed, a definite
period of im-
prisonment to
be fixed as equi-
valent.

Further provi-
sion made by
§ IV, R. XIV,
1797, and for
the ceded pro-
vinces by the
Second Clause
of XXXIX,
R. VII, 1803,
for commuting
to imprison-
ment, the fines
prescribed by
the Mohummud-
dan law in
cases not involv-
ing murder or
homicide.

Explained by
R. XIV, 1797,
§ VII, VIII;
and by Thir

Clause of § XXXIX, R. VII, 1803, for the ceded provinces, that the rules specified are not meant to prohibit the restitution of stolen property, when forthcoming, nor to restrict the criminal courts from adjudging a re-imbursement of actual costs, in particular instances.

by the Third Clause of Section XXXIX, Regulation VII, 1803, for the ceded provinces,) that nothing contained in the rules stated “ shall be construed so as to prohibit the restitution, “ to the lawful owners, of stolen property, recovered and “ produced before the magistrates, and courts of circuit; nor “ to restrict the criminal courts from adjudging a re-imbursement of costs, actually incurred upon a prosecution before “ them, by either of the parties thereto, in particular instances, wherein they shall consider such re-imbursement “ just and equitable.”

Perjury, subornation of perjury, and forgery, how punishable under the Mohummudan law.

Provision made for the punishment of perjury, by R. XVII, 1797, and for the ceded provinces by § XL, R. VII, 1803.

THE Mohummudan law, which has not prescribed any fixed penalties for perjury, subornation of perjury, and forgery, leaves the punishment of these crimes to be inflicted at discretion, under its provisions of *Tâzeer* and *Sacaful*, by flagellation, imprisonment, and public ignominy. The prevalence of perjury in the courts of justice requiring that this discretion should be used to the full extent authorized by the Mohummudan law, for the purpose of checking the commission of a crime so dangerous and prejudicial to society, the courts of circuit were authorized by Regulation XVII, 1797, and by Section XL, Regulation VII, 1803, to adjudge persons convicted of having wilfully given false testimony on oath, or under a solemn obligation esteemed equivalent to an oath, in some judicial proceeding, and in a matter material to the issue thereof, either to be publicly exposed by *Tusheer*, according to the opinion of ABOO HUNEEFAH, or to suffer corporal punishment and imprisonment, according to the opinion of ABOO YOOSUF and MOHUMMUD; or in cases of enormity, to receive the aggregate punishment according to both opinions; and to cause the word *durogh-go*, or such other words as in the most current local language might concisely express the nature of the crime, to be marked on the forehead of the convict, by a common process denominated *Gódna*, which leaves a blue mark that cannot be effaced with-

out tearing off the skin. Notwithstanding these provisions however, the flagrant offence of false testimony, with subornation of perjury, and forgery, equally injurious to the rights of individuals and to the due administration of justice, continued to prevail; and no specific penalties having been attached to these crimes by the Mohummudan law, persons convicted of them were sentenced to various, and in some instances inadequate, punishment, according to the *Futwas* of the law officers. It was therefore requisite, that further provision should be made, to define, as far as the degrees of criminality in different cases might admit, the sentences to be passed by the courts of circuit upon persons convicted before them of wilful perjury, subornation of perjury, or forgery. It was further judged expedient to declare such heinous and prevalent offences not bailable, except in special cases; and to expedite the exemplary punishment of persons, who might be guilty of them before the courts of circuit, by, providing for their immediate commitment and trial, when the whole of the requisite witnesses might be in attendance. Regulation XVII, 1797, and Section XL, Regulation VII, 1803, above-mentioned, were therefore rescinded by Section II, Regulation II, 1807; and the following rules were enacted by Sections III, IV, V, and VI, of that regulation.

Found inadequate and rescinded by § 11, R. II, 1807.

Rules enacted by R. II, 1807, III, IV, V, and VI, to the punishment of perjury, subornation of perjury, and forgery.

First. “ If any person amenable to the jurisdiction of a court of circuit shall be convicted before that court, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of the crime of wilful perjury, or of subornation of perjury, or of forgery, as defined in the following section of this regulation; and shall, in consequence, by the *futwah* of the Mohummudan law officers of the court of circuit, be declared liable to discretionary punishment (*tazceer*, *acoobut*, or *secasut*,) the judge of circuit, before whom the trial may be held, provided he concur in the conviction of the prisoner; (and shall consider

Section III. Sentence to be passed by the courts of circuit, on persons convicted of wilful perjury or of subornation of perjury or of forgery.

consider him a proper object of corporal and ignominious punishment) shall sentence the offender to be publicly exposed, in the mode commonly denominated tusheer; to have the words " durogh-go, or jal-saz," or others, of similar import, expressing the nature of the crime in the most current local language, marked on the offender's forehead, by the common process of " godna;" to receive thirty stripes with a corah; and to be imprisoned and kept to hard labor for a period not less than four, and not more than seven years. If it appear proper to banish the prisoner, during the period of his confinement, from the district in which he may have resided, he will be further liable to such sentence, in pursuance of Clause Third, of Section VIII, Regulation LIII, 1803. Provided however, that if the judge of circuit, on consideration of the circumstances of the case, and the prisoner's situation, shall deem the punishment above specified too severe, he shall submit the trial with his sentiments to the Nizamut Adawlut, for the final sentence of that court."

How to proceed if the stated punishment appear too severe.

Or if the judge of circuit differ in opinion from the law officer respecting the prisoner's conviction.

Second. " If the judge of circuit differ in opinion from the law officer of the court, with respect to the conviction of the prisoner, he shall not pass any sentence; but shall transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the court of Nizamut Adawlut."

Court of Nizamut Adawlut how to proceed in cases referred to it.

Third. " IN cases of reference to the Nizamut Adawlut, this court, after taking the futwah of its law officers, shall, if the prisoner be convicted, sentence him to any punishment deemed proper, not exceeding that specified in Clause First, of this Section."

Section IV. Definition of the crime of wilful perjury, punishable under the above rule.

First. " THE crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in the foregoing section, is hereby declared to be, giving intentionally and

and deliberately, before a court of judicature, magistrate, or other authorized public officer, a false deposition, upon oath, or under a solemn declaration, taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof."

Second. " SUBORNATION of perjury, punishable under the preceding section, is declared to be the crime of procuring, or causing, another person to commit the offence of perjury as above described."

And of subornation of perjury.

Third. " THE penalties for forgery, stated in Section III, are meant to include all fraudulent and injurious fabrications, or alterations, of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto; and the illicit imitation of any public stamp, or stamp paper, established by Government. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, will be liable to the same punishment, as those convicted of having actually committed the forgery, or the instigation of others."

To what descriptions of forgery the stated penalties are applicable.

" PERSONS charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding section, and appearing to the civil or criminal courts, by whom they may be ordered to be brought to trial before the courts of circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing regulation) unless specially authorized by the court under whose directions they are committed for trial. But nothing herein contained shall be construed to preclude the magistrate from admitting to bail persons committed by him for trial, on charges preferred originally before him, in cases cognizable by him under the regulations, without any order from a civil or criminal court

SECTION V.
In what cases persons charged with perjury, subornation of perjury, or forgery, may, or may not, be admitted to bail.

for the commitment of such persons for trial before the court of circuit."

section VI.
In what cases
persons guilty
of perjury, sub-
ornation of
perjury, or for-
gery, before a
court of circuit,
may be brought
to immediate
trial in that
court.

"WHENEVER a witness giving evidence before a court of circuit may be considered by the judge of that court to be guilty of wilful perjury; or whenever a person attending a court of circuit may be considered by the judge of that court to be guilty of subornation of perjury, or of forgery, in any trial or matter depending before the court; and the whole of the witnesses required for the proof of the charge, and for the defence of the accused, may be also in attendance; it shall be competent to the judge of circuit to direct the zillah or city magistrate to commit the person so charged for immediate trial before the court of circuit; instead of postponing the commitment for trial at the ensuing session of the court of circuit. Provided, that nothing in this section shall be construed to authorize the conviction or punishment of any person, charged with the crimes specified, until he shall have been regularly put upon his trial; or until any material evidence which he may have to offer in his defence shall have been received, and duly considered."

Provision made
by R. III,
1801, § II, to
prevent un-
founded charges
of perjury, and
subornation of
perjury, by the
parties in civil
suits.

It may be proper to notice in this place, that in consequence of its having become a prevalent practice for parties in civil suits to prefer unfounded charges of perjury against the witnesses of their opponents; and even against their own witnesses, when their evidence does not establish every point they were brought to prove; as well as similar charges of subornation of perjury against the adverse parties in such suits; it was deemed advisable, as the only effectual remedy for this abuse, (which, if not checked, might deter all men of respectability from appearing to give their testimony, on oath, in a court of justice,) to take away from parties in civil suits the right of bringing forward such accusations; and to leave it at the discretion of the judge, under the authority

vested

vested in him to commit for trial before the court of circuit any person guilty of wilful and corrupt perjury in any cause or matter depending in a civil court, to make such commitments, when he might see grounds for them. It was accordingly declared by Section II, Regulation III, 1801, for the provinces of Bengal, Behar, Orissa and Benares, (but this provision does not appear to have been included in the Regulations for the ceded provinces) " that the magistrates of
 " the several zillah and city courts shall not receive any
 " charges of perjury, which may be preferred by parties in
 " civil suits, either against their own witnesses, or against the
 " witnesses of the adverse party, or of subornation of per-
 " jury against the adverse parties in such suits; and all indi-
 " viduals whose attendance is required in the civil courts;
 " either as plaintiffs, defendants, or witnesses, are hereby de-
 " clared not to be liable to any prosecutions of this descrip-
 " tion, unless they shall be committed to take their trial by
 " the zillah or city judge, under the authority vested in him
 " by Section XIV, Regulation IV, 1793."

Parties and wit-
 nesses in the
 civil courts de-
 clared not lia-
 ble to prosecu-
 tion for perjury,
 or subornation
 of perjury, un-
 less committed
 by the judge of
 the civil court.

THE rules established by Regulations IV, 1799, and XXVIII, 1803, for the trial of persons charged with crimes against the State, will be more properly included in the next section of this Analysis. But as Regulation X, 1804, " for declaring the powers of the Governor General in Council to provide for the immediate punishment of certain offences against the State by the sentence of courts martial, involves a material alteration in the provisions of the Mohummudan law for *Bughâwut*, or rebellion, as well as a temporary supercession of the ordinary criminal courts, by the establishment of martial law, during the existence of war, or open rebellion, in any part of the British territories; it is here introduced at length; with the preamble, which states the grounds and objects of it.

Provisions made
 by R. X, 1804,
 for the imme-
 diate punish-
 ment of offences
 against the State,
 in certain cases,
 by the sentence
 of courts mar-
 tial.

" WHEREAS

Preamble to the regulation, stating the grounds and objects of it.

“ WHEREAS during wars in which the British Government has been engaged against certain of the native powers of India, certain persons, owing allegiance to the British Government, have borne arms, in open hostility to the authority of the same, and have abetted and aided the enemy and have committed acts of violence and outrage against the lives and properties of the subjects of the said Government; and whereas it may be expedient that, during the existence of any war in which the British Government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the Government, in any part of the British territories subject to the Government of the Presidency of Fort William, the Governor General in Council should declare and establish martial law, within any part of the territories aforesaid, for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British Government, who may be taken in arms, in open hostility to the said Government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the territories above specified: the following regulation has been enacted by the Governor General in Council, to be in force, throughout the British territories immediately subject to the Government of the Presidency of Fort William, from the date of its promulgation.”

Section II.
By whom, and under what circumstances, the functions of the ordinary criminal courts may be suspended; and martial law established.

“ THE GOVERNOR General in Council is hereby declared to be empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature, within any zillah, district, city, or other place, within any part of the British territories, subject to the Government of the Presidency of Fort William, and to establish martial law therein,

therein, for any period of time, while the British Government in India shall be engaged in war with any native or other power; as well as during the existence of open rebellion against the authority of the Government, in any part of the territories aforesaid; and also to direct the immediate trial, by courts martial, of all persons owing allegiance to the British Government, either in consequence of their having been born, or of their being resident, within its territories, and under its protection, who shall be taken in arms, in open hostility to the British Government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the said territories."

What persons liable to immediate trial, by courts martial, so established; and for what offences.

"It is hereby further declared, that any person born, or residing, under the protection of the British Government, within the territories aforesaid, and consequently owing allegiance to the said government, who, in violation of the obligations of such allegiance, shall be guilty of any of the crimes specified in the preceding section, and who shall be convicted thereof, by the sentence of a court martial, during the suspension of the functions of the ordinary criminal courts of judicature and the establishment of martial law, shall be liable to the immediate punishment of death, and shall suffer the same accordingly, by being hung by the neck till he is dead. All persons who shall, in such cases, be adjudged, by a court martial, to be guilty of any of the crimes specified in this regulation, shall also forfeit to the British Government all property and effects, real and personal, which they shall have possessed within its territories, at the time when the crime, of which they may be convicted, shall have been committed."

Persons owing allegiance to the British Government and convicted of any of the crimes specified, viz. open hostility to the British Government, or opposing its authority by force of arms, or the actual commission of any overt act of rebellion against the State, or openly aiding and abetting the enemies of the British Government within its territories, declared liable to immediate punishment of death.

Also to forfeiture of all property, real and personal possessed within the British territories when the crime was committed.

"THE GOVERNOR General in Council shall not be pre-
E c e

"cluded,

Section IV.
But the Governor General in Council may cause

persons charged with any of the offences specified to be tried before the ordinary courts, or before a special court, if the immediate trial by court martial shall not appear necessary.

“ cluded, by this regulation, from causing persons charged with any of the offences described in the present regulation, to be brought to trial,* at any time, before the the ordinary courts of judicature, or before any special court appointed for the trial of such offences, under Regulation IV, 1799, and Regulation XX, 1803, instead of causing such persons to be tried by courts martial, in any cases wherein the latter mode of trial shall not appear to be indispensably necessary.”*

By

* The following circular instructions to the magistrates of the ceded and conquered provinces, for their guidance when martial law might be proclaimed under the above Regulation, were transmitted by order of Government, in a letter from the Chief Secretary, dated the 11th April 1805.

“ You have already been furnished with Regulation X, of 1804, which provides for the eventual establishment of martial law under the circumstances therein described, within any part of the British territories subject to the immediate authority of this Government. I am now commanded by His Excellency the Most Noble the Governor General in Council to communicate to you the following special orders for the regulation of your conduct in the event of its being at any time considered to be necessary, or proper, to proclaim martial law in the district under your authority. Whenever martial law shall be proclaimed, you will direct all officers in command of troops, which shall be employed within your jurisdiction, to act under the proclamation, until it shall be recalled; leaving it to the discretion of such officers to confine the operation of the proclamation to the principal persons, or persons, concerned in any of the acts of rebellion described in the regulation, or to extend it to their principal adherents and followers, as the exigency of the case may require. If any person or persons, charged with any of the overt acts of rebellion specified in Regulation X, of 1804, shall be apprehended by any military officer, who not in the actual commission of offences of that description, they are to be delivered over by the military to the civil power; and you are required to commit such persons to close custody; and to adopt the necessary measures for bringing them to trial on a charge of high treason. In cases of such commitment you will communicate the circumstances, without delay, to the court of circuit for the division of Bareilly, with intimation when the trial may come on; in order that the court may depute two of its members to your station for the trial of the prisoners, in virtue of powers vested in them to that effect under Regulation XX, of 1803. You are commanded to attach all property, whether real or personal, which shall be situated within your jurisdiction, belonging to any person or persons who may be guilty of overt acts of rebellion against the authority of Government; and to continue such property under attachment until the pleasure of the Governor General in Council on the occasion shall be known. Whenever you shall attach landed estates in virtue of the present order, you will place the same under the management of the collector of the district; with instructions to adopt the proper measures for realizing the revenues of such estates. Should the property of the rebels be situated in any other district, you will make the necessary communication to the judge and magistrate of such district, requiring him at the same time to attach the property in question, and to continue the same under attachment until he shall be furnished with the orders of government for his further guidance in the disposal of the property.”

By Section X, Regulation IV, 1797, the Nizamut Adawlut were authorized, under the discretion allowed by the Mohammudan law, to order any prisoners, sentenced to imprisonment for life, or for a limited period of seven years or upwards, to be transported to some place beyond sea. And by Section V, Regulation II, 1799 (corresponding with Section XXII, Regulation VIII, 1803, for the ceded provinces) any convicts sentenced to imprisonment by the Courts of circuit or Nizamut Adawlut, who, during the period of their sentences, might escape, and be re-apprehended, were declared liable to transportation by order of the Nizamut Adawlut; either during the remaining period of their sentences, or for a longer period if the Nizamut Adawlut should, on consideration of the circumstances of the case, judge it proper to direct the same. But these rules were found open to objection, with respect to convicts sentenced to short periods of imprisonment, from difficulties attending their return to Bengal, from the place of transportation, after the expiration of their sentences; and it was therefore judged advisable that none, except persons convicted of heinous offences, and sentenced to be imprisoned for life, should be transported in future beyond sea; substituting banishment from the district in which the offender's place of abode may be situated, with hard labor on the public roads, or other public works, for convicts sentenced to limited imprisonment, who may be deemed proper objects of this mode of punishment. The following rules were accordingly enacted, by Section VIII, Regulation LIII, 1803.

Former rules for transportation of convicts sentenced to imprisonment for seven years or upwards, or who might escape during the period of their sentences, and be re-apprehended, found open to objection.

Transportation in consequence, restricted to persons convicted of heinous offences, and sentenced to be imprisoned for life.
Banishment from the district in which the offender's place of abode is situated, with hard labor, substituted for convicts sentenced to limited imprisonment and deemed proper objects of this mode of punishment.

"If any property, of persons charged with acts of rebellion against the State, shall be attached by any military officers employed in the district under your authority, such property is to be delivered over to your charge; whether the owners shall have been taken in arms or otherwise; and to be retained under attachment, until you shall have received the orders of government for its disposal. The Right Honorable the Commander in Chief will be requested to make these rules known to all military officers employed in the command of detachments within the limits of the ceded and conquered provinces, and to enjoin a strict adherence to them in all cases to which they may be applicable."

First.

Rules for these
purposes en-
acted by R. LIII,
1803, §. VIII.

First. " So much of Section X, Regulation IV, 1797, as authorizes the transportation, to some place beyond sea, of convicts sentenced to be confined for a term of seven years; or for any limited term of years; and directs a reference from the Courts of circuit to the Nizamut Adawlut in all instances wherein they shall consider offenders convicted before them to be proper objects of transportation; is hereby rescinded."

Second. " TRANSPORTATION beyond sea shall be hereafter restricted to convicts who may be sentenced to confinement for life; and in all instances wherein a sentence of confinement for life may be passed against a prisoner, whether by the Courts of circuit in the first instance, or finally by the court of Nizamut Adawlut, the court passing such sentence, if it deem the prisoner a proper object of transportation beyond sea, shall at the same time adjudge him, or her, to be transported for life."

Third. " IN the cases of convicts sentenced to confinement for life, whom the Courts of circuit and Nizamut Adawlut may not consider proper objects of transportation beyond sea, under the preceding clause; as well as in all cases of convicts sentenced to imprisonment for a limited period; the court by whom the sentence is passed, if it deem the same proper, on consideration of the prisoner's offence, may adjudge him to be banished, during the period of his sentence, from the district in which his place of abode is situated; and to be kept to hard labor on the public roads, or other public works, in any other district, to which he may be removed by order of the Nizamut Adawlut."

Fourth. " The magistrates of the several zillahs, at the close of the half yearly jail-delivery of their respective districts, and the magistrates of the several cities, on the 1st

January

January and 1st July of each year, or at any other period when the same may be required by the Nizamut Adawlut, shall transmit to that court a list of the convicts in their respective jails who may have been sentenced to transportation beyond sea, or to banishment from the district in which the offenders may have resided, under each of the two preceding clauses; specifying in such lists the names, ages, crimes, and sentences of the several convicts; and in the list of those sentenced to banishment, the district in which they may have usually resided before they were brought to trial."

Fifth. "THE court of Nizamut Adawlut, after receiving the lists required by the foregoing clause, will issue the necessary directions for conveying to the jail of the 24-Pergunnahs the convicts sentenced to transportation beyond sea, when the state of that jail may admit of their being received; or an opportunity may offer for transporting them; and will also give the requisite instructions concerning the removal of the convicts under a sentence of banishment. The court of Nizamut Adawlut is further declared competent, as heretofore; under the discretion allowed by the Mahomedan law, to order the removal of all convicts, under sentence of imprisonment, to any jail or district, within the Company's possessions, in which it may be thought proper to keep or employ them, during the period of their respective sentences, although no specific sentence of banishment may have been passed against them under Clause Third, of this section. But no such removal shall take place without the special order of the court of Nizamut Adawlut."

Court of Nizamut Adawlut may order the removal of all convicts under sentence of imprisonment, to any jail, or district, within the Company's possessions.

THE following rules were also enacted by Section IX, of the regulation last mentioned, for the punishment of convicts who may effect their escape during the period of their sentences; or, if transported, may return without permission from the place

Rules enacted by § IX, R. LXX, 1803, for the punishment of convicts who may effect their escape during the period of their sentences.

or, if transported, may, without permission, to any part of the Company's territory under the Bengal Presidency.

place of their transportation to any parts of the Company's territory under the Presidency of Bengal.

First. "SECTION V, Regulation II, 1799, and Section XXII, Regulation VIII, 1803, are hereby rescinded. Any convicts sentenced to imprisonment by the courts of circuit, or by the court of Nizamut Adawlut, who, during the period of their sentences, may escape from jail, or other place of confinement; or from the roads, or any other place where they may be employed; and who may be re-apprehended; shall be brought to trial before the courts of circuit for such escape; as well as for any acts of violence, or aggravating circumstances, attending their escape; or for any violent acts done in an attempt to escape; and, on conviction, they shall be liable to such further punishment, in addition to their former sentences, as may be adjudged against them, on consideration of the circumstances of the case, under the provisions contained in this regulation."

Second. "ANY convict, under sentence of transportation for life, who may be transported to any place beyond sea, after the promulgation of this regulation, and shall escape from such place of transportation, and return, without permission, to Bengal, or to any part of the Company's territory under the Presidency of Bengal, shall, on conviction thereof, to the satisfaction of the Nizamut Adawlut, and if no circumstances appear to that court to render such convict an object of mercy, be adjudged to suffer death."

Concluding remark.

THE foregoing are the whole of the modifications of, or additions to, the Mohummudan criminal law, made by the existing Regulations of the British Government, which it appears requisite to specify in this Section. But it may be proper to add that, under the provisions of Regulation LI, 1803, relative to trials depending in the ceded provinces when the regulation

Provisions in R. II, 1803, R. LX, and IV, 1804, to prevent any retrospective operation of the modification.

regulations for criminal justice, passed on the 24th March 1803; were ordered to take effect; in those provinces; the provisions of Regulation IX, 1804, for the administration of criminal justice in the conquered provinces of the Doab, and on the right bank of river Jumna, as well as in the ceded territory of Bundelcund; and the provisions of Regulation IV, 1804, for the administration of justice, in criminal cases in Cuttack; the courts of judicature were restricted from giving any retrospective operation to the stated modifications of the Mohummudan law in those territories respectively; excepting such, as direct a commutation of the punishment of amputation to imprisonment; or otherwise have an operation favorable to the prisoner. It was, in like manner, provided by Regulation XVI, 1805, which, in consequence of the continuance of hostilities between Great Britain, France, and Holland; and of the incompetence of the courts established at Chandernagore and Chinsurah, to inflict capital punishment; extended the jurisdiction of the court of circuit for the division of Calcutta, and of the court of Nizamut Adawlut, over those settlements; together with the rules in force for the administration of criminal justice in the provinces of Bengal, Bahar, and Orissa; that no part of the existing regulations, whereby the punishment of any offence is enhanced beyond the punishment of such offence prescribed by the Mohummudan law, should be considered applicable to any crime committed within the settlements of Chandernagore or Chinsurah, before the promulgation of this regulation. In such cases, it is directed, that "the court of circuit and Nizamut Adawlut shall be guided by the Mahomedan law, as declared by the *futwas* of their law officers; and by such modifications of it, in favor of the prisoner, as have been made by any regulation in force; except that the will of the heir of the slain shall not be allowed to operate in cases of murder." It is further provided that "if the offender be an European, or the defendant of an European, and be a settled inhabitant

ons specified in the ceded and conquered provinces (including Cuttack) excepting such as have an operation favorable to the prisoner.

Similar provision made by R. XVI, 1805, for the settlements of Chandernagore and Chinsurah, clause first, and second.

Clause Third.

Clause Fourth.

inhabitant of Chandernagore or Chinsurah, and the punishment of the offence, under the Mahomedan law, and the provisions of this regulation, would be more severe than the punishment of the same offence under the law in use, when the settlement, in which it may be committed, came into the possession of the British Government, the punishment, to be adjudged against the prisoner, shall be regulated by the law which was in use when the settlement, wherein the offence shall have been committed, came into the possession of the British Government."



SECTION III.

MAGISTRATES AND CRIMINAL COURTS.

OF the forty zillah and four city courts, of civil judicature, mentioned in the first part of this Analysis; * three have been since discontinued; viz. one in Cuttack, by Section II, Regulation XIII, 1805; which directs that the districts comprised in that province, excepting three, pergunnahs annexed to zillah Midnapore, shall form one zillah, instead of two, as prescribed by Regulation IV, 1804; another in zillah Moorshedabad, by Section II, Regulation I, 1806; in pursuance of which the mehals comprising that zillah have been transferred to the jurisdiction of the city of Moorshedabad, and zillah Beerbhoom; and a third in Seharunpore, by Regulation XIV, 1806; which provides that the civil jurisdiction of the Northern division of that district shall be incorporated with the civil jurisdiction of the Southern jurisdiction; but that the criminal jurisdiction of the Northern division shall continue separate; until the abolition of it appear advisable to Government. Moreover, the revenue of the territory in the intended zillah of Rampur comprising the city of Delhi, and its vicinity on the right bank of the Jumna, having been assigned to the late King SADR-UD-DULAH, this territory was declared by Section IV, Regulation VIII, 1805, not subject to

Alteration in the number of zillah and city courts since the First Part of this Analysis was printed.

any of the laws or regulations of the British Government. But the civil court of the 24-Pergunnahs near Calcutta, before noticed as abolished, has been re-established by Regulation VII, 1806; and a new civil and criminal jurisdiction has been constituted, under Regulation XVIII, 1805, for certain districts, called the Jungle Mchals, or Forest lands,* situated in the former zillahs of Beerbhoom, Burdwan, and Midnapore. The present number of zillah and city jurisdictions therefore is forty-two; or forty-three, including the criminal jurisdiction of the Northern division of Seharunpore; exclusive of the foreign Settlements of Chandernagore, Chinsurah, and Serampore,† which may be considered to constitute three separate jurisdictions; and will be spoken of distinctly, as the special provisions made for the temporary administration of justice in these settlements, differ, in some respects, from the provisions contained in the general regulations.

Present number
of zillah and
city jurisdictions,
civil and
criminal.

What persons
vested with the
office of magis-
trate in the
several zillahs
and cities.

R. VII, 1806,
preamble, and,
§ VII.

R. IX, 1798,
§ II, III.
B. R. II,
1795,
§ II, III.
C. P. R. VI,
1809,
§ II, III.

In the four cities of Dacca, Moorshedabad, Patna, and Benares; and in the thirty-nine zillahs, which compose the residue of the provinces subject to the presidency of Fort William, (except the Northern division of Seharunpore, in which there is a separate magistrate, as already noticed; and the 24-Pergunnahs, with parts of the adjacent districts situated within the distance of about twenty miles from Calcutta, in which it has been judged expedient, with a view to improve the police of the town and suburbs of Calcutta, that the justices of the peace for the town shall exercise the powers and perform the duties of magistrate;) the judges of the Dewanny Adawlut, or civil court, are vested with the office of magistrate in their respective jurisdictions. But previously to entering upon the execution of the duties of his office, the magis-

* See First Part of this Analysis, p. 196, and Note.

† Since the preceding section was written, a regulation has been enacted, to provide for the administration of civil and criminal justice in the settlement of Serampore, in consequence of its recent capture by the British arms.

trate is required to take and subscribe, before the Governor General in Council, or such persons as he may commission to administer it, an oath, declaring that he will, to the best of his ability, preserve the peace of the zillah or city over which his authority extends; that he will act with impartiality and integrity; and will not exact or receive, nor knowingly allow any other person to exact or receive, any fee, reward, or emolument whatsoever, except such as is expressly authorized by Government. Also, that he will perform the duties of his office to the best of his knowledge, abilities, and judgment, in conformity with the regulations that have been, or may be, passed by the Governor General in Council.

ALL natives of the country, and all other persons, not being European British subjects, are amenable to the authority of the magistrate in whose jurisdiction they reside, or may be found when a criminal charge is preferred against them; or in which a crime or misdemeanor may be committed by them.* Natives residing within the town of Calcutta, or committing, within the local jurisdiction of the Supreme Court of Judicature, offences exclusively cognizable by that court, are not, of course, included in the rule cited. European British subjects (viz. natives of Great Britain and their descendants) are also expressly declared amenable only to the Supreme Court of Judicature at Calcutta, for all acts of a criminal nature; and in the event of any charges being preferred against them to a zillah or city magistrate, which may render them liable to a criminal prosecution, the following process is ordered to be observed.

* The *Nawab* of *Ferdunabad* must be considered an exception to the general rule stated, under the treaty cited in P. 49, of the First Part of this Analysis. The *Nawab* of Bengal, and the principal members of his family, are also excepted from the ordinary process of the magistrate by the provisions of Regulations XIX, 1805, and XVI, 1806, which direct, that all references and applications to the *Nawab*, or other persons therein specified, be addressed in a prescribed form, and forwarded through the Superintendent of Nizamat affairs; who is authorized, if the reference or application appear objectionable, either from its tenor or form, to delay the communication of it, and report the circumstances of the case for the orders of the Governor General in Council.

Oath to be taken by the magistrates.

R. IX, 1795, § XIX, extended to Benares by § IV. B. R. XVI, 1795, R. II, 1796, § II. C. P. R. VI, 1803, § XIX.

What persons amenable to the authority of the zillah and city magistrates.

R. XXII, 1793, § XVI. B. R. XVII, 1795, § XV. C. P. R. XXXV, 1803, § XVI.

What persons amenable only to the Supreme Court of Judicature at Calcutta, and process to be observed by zillah or city magistrates, on criminal charges against European British subjects.

R. I, 1796, § II, III, IV, re-enacted for ceded provinces in § XIX. C. P. R. VI, 1803, and amended by R. XV, 1806.

Magistrate how
to proceed if he
has taken the
oaths of qualifi-
cation as a jus-
tice of the
peace.

First. If the magistrate, to whom the charge is preferred, shall have taken the oaths of qualification as a justice of the peace, and thereby have become vested with the authority of a justice of the peace, as provided by Act of Parliament, * the magistrate, on the charge or information being lodged before him upon oath, is to apprehend the party accused; and, if the evidence against him be sufficient to warrant the same, is to hold him to bail, or commit him to the custody of the Sheriff of Calcutta, for trial before the Supreme Court, at the ensuing session. He is, at the same time, to bind over the prosecutor to repair to Calcutta before the next session, and to take recognizances from the witnesses for their appearance at the trial. He is further required to transmit the original depositions taken on the occasion, (with translations of any papers not in the English language,) to the Clerk of the Crown: and to send copies thereof to the Secretary to Government in the Judicial Department, for the information of the Governor General in Council; who, if he consider it necessary, from the aggravated nature of the offence, or any other substantial ground, will order the prosecution to be conducted by the law officers of government, and at the public expence.

R. XV, 1806,
§ III.

What to be
done, if the
magistrate is not
qualified to act
as a justice of
the peace, and
the offence
charged be not
bailable.

Secondly. Whenever an European British subject shall be charged before a zillah or city magistrate, who has not taken the oaths of qualification as a justice of the peace, with a criminal offence, which, according to the law of England, may not be bailable; and the magistrate, after making the necessary inquiry on the subject, shall be of opinion, that there are

* The Act, which empowers the Governor General in Council, by Commissions under the Seal of the Supreme Court of Judicature, issued in the name of the Chief Justice, to appoint Covenanted Servants of the Company, or other British Inhabitants, whom he may think properly qualified, to act as Justices of the Peace, and vests the persons so appointed, after taking the prescribed oaths before the Court of Oyer and Terminer at Calcutta, with full power and authority to act as Justices of the Peace, according to the tenor of their commissions, in and for the places therein specified, is erroneously cited in the Preamble to Regulation II, 1796, as the Act of 25 Geo. III, Cap. 65, instead of 33 Geo. III, Cap. 52. See 151, 152.

grounds

grounds for bringing the person accused to trial before the Supreme Court of Judicature, he is to send the person accused, under safe custody, to His Majesty's justices of the peace, at the police office in Calcutta, accompanied by the witnesses against the prisoner; with a letter, stating the nature of the case, and requesting that the justices of Calcutta will take the necessary measures for bringing the person accused to trial before the Supreme Court of Judicature. The magistrate, by whom the prisoner may be sent to Calcutta, is, at the same time, to transmit a copy of all the proceedings held on the occasion, (together with translations of any papers not in the English language) to the secretary to government in the judicial department, to enable the Governor General in Council to determine, whether the prosecution should be undertaken by the law officers of government, and at the public expense, or otherwise.

Thirdly. WHENEVER any person shall charge an European British subject before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a bailable offence, it is declared to be the duty of the magistrate to explain to the complainant the course which he should pursue, for the purpose of obtaining redress; that is, by application to the justices of the peace at Calcutta, or to the grand jury. It is likewise required of the magistrate, after calling upon the person accused for his reply to the complaint, to report the case to the Governor General in Council; at the same time stating, on a consideration of the distance at which the parties may reside from the presidency, of the poverty of the complainant or of other circumstances, whether it would, in the opinion of the magistrate, be proper, that the expense of the prosecution should be defrayed by government. The Governor General in Council, on receipt of such report, will pass such orders on the subject as may appear to him to be advisable; and will direct, in cases which may appear to require it, that

B

the

R. XV, 1806,
§. V.
Magistrates not
qualified to act
as justices of the
peace, how to
act if the of-
fence charged
to bailable.

the prosecution shall be conducted by the law officers of the Company.

R. II, 1796,
S. VI, C. 4.
R. VI, 1803,
S. XIX, C. 4.
Allowance to
indigent prosecu-
tors and wit-
nesses unable to
pay the charge
of their jour-
ney to Calcutta.

Fourthly. In all cases of inability, of the prosecutor or witnesses, to defray the charge of the journey to Calcutta, the magistrate is authorized to make them the same allowance as he is authorized to make to prosecutors and witnesses in need of such assistance during their attendance on the courts of circuit, viz. a daily allowance of two annas each during their attendance on the Supreme Court, including the actual period of their journey to and from Calcutta; or sufficient time for their return after their discharge from the court in cases wherein it may appear they have voluntarily protracted their return beyond what was necessary.

Remark on a-
bove provisions.

By the provisions above stated every practicable facility is given to obviate, as far as circumstances admit, the ill consequences resulting from British subjects, however remotely situated, being amenable only, for criminal offences, to the Supreme Court in Calcutta. And as less inconvenience is sustained by prosecutors and witnesses, when the magistrate is empowered to act as justice of the peace, all persons appointed to the station of zillah or city magistrate are required to take the oath of qualification, within six months from the date of their appointment. In particular cases the court of Nizamut Adawlut may grant an extension of time not exceeding a further period of six months. But no magistrate is to defer taking the prescribed oath, beyond a twelve month from the date of his appointment, without the sanction of the Governor General in Council.

R. II, 1796,
S. VI, C. P.
R. VI, 1803,
S. XIX, C. 5.
Magistrates re-
quired to take
oath of qualifi-
cation as justi-
ces of the
peace, within
six months after
their appoint-
ment.

What offences
are cognizable
by the zillah
and city ma-
gistrates, and in
what cases they
are authorized
to pass sentence.

It is declared to be the general duty of the magistrate "to apprehend murderers, robbers, thieves, house-breakers, all disturbers of the peace, and persons charged before him with crimes or misdemeanors." And in the following cases

the magistrates are authorized to pass sentence, without reference to the courts of circuit or Nizamut Adawlut; though subject to the revision and controul of those courts in particular instances which may appear to require it. By Section VIII, Regulation IX, 1793, extended to Benares by Section IV, Regulation XVI, 1795, and re-enacted for the ceded provinces by Regulation VI, 1803, Section VII, the magistrates were empowered "to hear and determine, without any reference to the courts of circuit, all complaints or prosecutions brought before them, for petty offences; such as abusive language, calumny, inconsiderable assaults, or affrays; and to punish the offender, when convicted, by committing him to prison for a term not exceeding fifteen days, or by imposing a fine upon him; but the fine in no case to exceed the sum of fifty sicca rupees; unless the offender be a zemindar, independent talookdar, or other actual proprietor of land, paying an annual revenue to government of more than ten thousand sicca rupees; or a proprietor of ayma land paying a quit revenue to government exceeding five hundred sicca rupees per annum; or of lakheraj land the annual produce of which may be above one thousand sicca rupees; in which cases the offender is liable to a fine not exceeding two hundred sicca rupees. The magistrate is to fix the amount of the fine under the limitations prescribed upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender." The magistrates were likewise authorized "to hear and determine, without any reference to the courts of circuit, all complaints or prosecutions brought before them for petty thefts, when they shall not have been attended with any aggravating circumstances, or committed by persons of notorious bad character; and to inflict upon the offenders corporal punishment not exceeding thirty rattans, or commit them to prison for a term not longer than one month; according as they may think proper, upon a consideration of the the circumstances of the case." If the complaints specified appear

without reference to the courts of circuit, or Nizamut Adawlut. R. IX, 1793, §. IV, extended to Benares by §. IV, B. R. XVI, 1795, re-enacted for ceded provinces by §. IV, C. P. R. VI, 1803. R. IX, 1793, §. VIII, C. P. R. VI, 1803, §. VIII. Petty offences which may be tried by the magistrates and how punishable.

R. IX, 1793, §. IX, C. P. R. VI, 1803, §. IX. What charges of theft may be tried by magistrates, and how punished.

R. IX, 1793, §. X.

C. F. R. VI,
1807, § X.
Groundless vexatious
charges how
punishable by
the magistrate.

appear to the magistrate, on investigation, to be litigious, vexatious, or groundless, he is further authorized to punish the complainant, by fine, or imprisonment, under the limitations prescribed for the punishment of the petty offences first stated. * With a view to the speedy trial of persons charged with offences, not of a heinous nature, and to prevent the necessity of a second attendance of the prosecutors and witnesses in such cases, before the courts of circuit, the powers originally vested in the magistrates, as above stated, have been enlarged by Section XIX, Regulation IX, 1807; whereby they are empowered "in all cases of conviction before them, of any criminal offence punishable under the Mahomedan law, and the regulations, for which the penalties authorized by the sections above quoted may appear insufficient, or to which the rules referred to may not be expressly applicable, and for which a more severe punishment than six months imprisonment, with thirty rattans, or a fine of two hundred rupees, may not have been specifically prescribed, (in which case the prisoner, if there appear grounds for it, must be brought to trial before the court of circuit) to pass sentence of imprisonment, not exceeding six months; with corporal punishment, not exceeding thirty rattans, in cases of theft; or in other cases with a fine, not exceeding two hundred rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months, in pursuance of Section III, Regulation XIV, 1797, and Section XXXI, Regulation VI, 1808; so that the entire period of imprisonment, under the sentence of a magistrate, shall, in no instance, exceed one year. The two sections here cited, in pursuance of the general rule for the guidance of the criminal courts

R. XIV, 1797,
§ III, and V.
C. F. R. VI,
1807, § VI.
General rule
with respect to
fines imposed
by the magi-
strate.

* This rule is ordered to be strictly enforced against persons lodging unfounded and litigious complaints against persons employed in the service of the Government, by them, and attaching their property for arrears of rent. Regulation VII, 1797. Section XIX is restricted for breach by Section XII, Regulation V, 1800.

before noticed, (in page 409,) direct that no fines be imposed by a magistrate, except for the use of government, and that whenever any such fine be imposed, the magistrate, weighing all the circumstances of the case, shall fix a definite period of imprisonment, to be held as equivalent to the fine; at the expiration of which, the prisoner shall be discharged, although he may not have paid the fine.

By the original rules for the guidance of the magistrates, contained in Regulation IX, 1793, extended to Benares by Regulation XVI, 1795, and re-enacted for the ceded provinces by Regulation VI, 1803, they were required, in all cases of a written complaint being preferred to them, upon oath, for any crime or misdemeanor, to issue a warrant for the apprehension of the person complained against. But the immediate arrest of the accused being in many instances found unnecessary and objectionable, especially upon charges of a trivial or exaggerated nature, against persons of respectability; and it appearing expedient that provision should be made for authorizing an enquiry, previous to arrest, when the magistrate may see cause to distrust the truth of a criminal charge preferred to him; as well as for issuing a summons, instead of a warrant, in cases that may not require the immediate apprehension of the party complained against; for dispensing with personal appearance to answer accusations of trivial offences, when the agency of a constituted representative may be sufficient; and with the personal attendance of parties preferring charges of a criminal nature, when sufficient reason can be assigned for their non attendance; also for regulating the demand of bail, in cases wherein security for appearance may be required; the following rules were enacted for these purposes, in Regulation IX, 1807; which also prescribes the forms of process to be issued, and of bail or security bonds to be taken in conformity thereto.

What process to be issued, on charges preferred to the magistrates.
R. IX, 1793, § V.
C. P. R. VI, 1803, § V.
Rules in force, before the enactment of R. IX, 1807.

Rules of process enacted by R. IX, 1807, § III, C 1, and part of C. 3. In what cases a warrant for apprehension to be issued.

" UPON a complaint being preferred in writing,* to a zillah or city magistrate, against any person subject to his jurisdiction, for treason, murder, robbery, house-breaking, theft, setting fire to a village, house or other building, counterfeiting the coin, or any other crime declared not to be bailable; or though not so expressly declared, involving such dangerous breach of the peace, or degree of criminality, as from the facts, deposed to before the magistrate, may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper; the magistrate, on the truth of the charge being deposed to by the complainant, or in the manner required by the following section, shall issue a warrant under his official seal and signature, specifying the crime charged; and directing the officer, entrusted with the execution of it, to apprehend the person accused. If the magistrate shall, in any bailable case, of the nature above described, judge it proper to authorize the officer, to whom the warrant is committed, to receive bail for appearance (with or without security for keeping the peace) it shall be so specified in the warrant, with the extent of the bail (and security) required."

Section IV.
In what cases
the attendance
and deposition
of the com-
plainant may be
dispensed with.

" THE attendance and deposition of the complainant shall not be indispensable in preferring a criminal charge, when sufficient reason can be assigned for his non attendance. If

* With a view to discourage litigious and exaggerated complaints, it is required by Section XXII, Regulation VII, 1800; (re-enacted for the ceded provinces by Section XXIII, Regulation XLIII, 1805) that all complaints for petty offences, determinable by the magistrates, shall be written upon stamp paper, bearing a duty of eight annas, per roll, or sheet, whether the same be preferred, in the first instance, to the magistrate, or to a police officer. If any person, with a view to evade the prescribed duty, shall wilfully misrepresent the nature or circumstances of the offence complained of, he is declared liable to a penalty, equal to ten times the amount of the stamp duty; or in default of payment, to such other punishment as the magistrate may judge proper; under the general powers vested in him. But the magistrate may remit the stamp duty, in all cases wherein the complainant may appear unable, from poverty, to discharge it. And he may also cause the money so retained against to refund to the complainant the amount of any stamp duty paid by him, when it may appear proper.

the complainant be unable to attend in person, or if he were not himself present at the commission of the act complained of, his written plaint, presented by an authorized agent, and corroborated by the deposition on oath (or on a solemn declaration, if the rank or cast of the deponent render it improper to require an oath,) of one or more persons present, or otherwise personally informed of the truth of the complaint, shall be sufficient ground for receiving the same, and for issuing process against the party accused; unless the magistrate see reason for making the previous enquiry authorized by the following section; but no warrant of apprehension shall be issued at the instance of a complainant, unless the truth of the charge be deposed to, on oath, (or under a solemn declaration,) either by the complainant himself, or by some other credible person. This shall not however be construed to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear, upon the report of a police officer, or upon any other credible information."

And in what manner the charge may be received in such cases.

" If the magistrate see cause to distrust the truth of a complaint preferred to him, whether from the nature of the charge as manifestly improbable, exaggerated, or vexatious; or from the circumstances deposed to before him, considered with the known situation and character of the person accused; and if the immediate arrest of the party complained against appear unnecessary and objectionable; the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous inquiry to be made, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of such inquiry induce the magistrate

Section V.
Magistrate how to proceed, if he see cause to distrust the truth of a complaint; and the immediate arrest of the party complained against, appear unnecessary.

magistrate to believe the charge well founded, and the offence committed be of the nature described in Section III, he shall issue his warrant for apprehending the accused, as therein directed. But if the accusation appear groundless; or though well founded, if the offence be of a bailable nature, he is empowered, in the former case, to dismiss the complaint; or in the latter case, to direct bail to be taken from the accused, for appearance, in person, or by vakeel, to answer the charge, as provided by the following section."

Section VI,
Process to be
issued by the
magistrate, if
the offence
charged be of a
bailable nature.

" UPON a complaint in writing being preferred to a zillah or city magistrate, against a person subject to his jurisdiction, for any bailable crime, or misdemeanor, which may not appear to require the immediate apprehension of the accused, the magistrate, upon the party complaining making oath, (or a solemn declaration, if the party be of a rank or cast which would render it improper to compel him to take an oath) to the truth of the complaint, or without such oath (or declaration,) if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to by some other credible person or persons, shall issue a summons, under his official seal and signature, to be served through the foudary nazir, by a single chuprassy, or peon, or in the manner prescribed for the service of civil process by Clause Second, Section II, Regulation II, 1805, if practicable and deemed expedient; or in the mode directed by the rules in force for serving warrants on charges of bailable offences against persons employed in the salt department, or in the provision of the Company's investment, if the party complained against be so employed. The summons in all such instances shall specify the offence with which the accused is charged, and shall, according to the circumstances of the case, contain a requisition to attend, either in person or by vakeel, to answer to the charge on or before a certain day to be stated in the summons.

mons. If it be deemed necessary to require bail, the extent of the bail is to be specified in the summons.

" Is an accused person, on whom a summons shall have been served, as provided in the preceding section, shall not attend in person, or by vakeel, and give bail (if required) according to the exigence of the summons, within the period limited by it, the magistrate shall issue a warrant under his official seal and signature, for the apprehension of the accused, and if he abscond, shall proceed against him, in the manner directed by Section IV, Regulation XI, 1796, and Section IV, Regulation III, 1804."

Section VII.
Further process to be issued, if the party summoned shall not attend, as required.

" In cases of a trivial nature; such as abusive language, slight trespasses, and inconsiderable assaults or affrays, in which there may be no reason to apprehend that the party complained against will abscond, bail for appearance shall not be required in the first instance; but may at any time, during the investigation of the charge, be called for by the magistrate, if any circumstances should occur to render it necessary. The officer entrusted with the service of the summons in such cases, as well as in all other cases wherein bail may not be required, shall demand only an acknowledgment of the receipt of it; and in the absence of the party, the summons may be served on the principal person in his house or family; if such person be willing to receive the same, and to return an acknowledgment for the party. The officer serving the summons in such instances, as well as in all cases wherein the magistrate may deem it proper to admit the private adjustment of such cases, shall be further instructed, on the tender of a *razeenamah* according to the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint being withdrawn, to receive such *razeenamah*, as a sufficient receipt for the process committed to him. But excepting the trivial cases noticed in this section, no *razeenamah*

Section VIII.
In what cases bail for appearance is not to be required in the first instance.

Summons, how to be served, in such cases.

Rule for acceptance of *razeenamahs*.

mah shall be received without the special sanction of the magistrate; nor shall any private compromise be admitted by the magistrate in crimes of a heinous nature, such as, on conviction, may require exemplary punishment for the ends of public justice."

Proceedings to be held by the magistrate, upon the trial of criminal charges

R. IX, 1793, § VI.
Extended to Benares, by P. R. XVI, 1795.
C. P. R. VI, 1803, § VI.

Particulars of charge to be recorded,

R. IX, 1793, § V.
C. P. R. VI, 1803, § V.

Inquiry to be made after attendance of the accused.

R. I, 1702, § II, III.
C. P. R. VIII, 1803, § XXV.

R. IX, 1793, § V, VI.
C. P. R. VI, 1803, § V, VI.

Instructions relative to confessions of prisoners

THE magistrates are directed, upon receiving any criminal charge, to ascertain from the complainant (or his representative, if the charge be preferred by agency) and record upon their proceedings, on what day of the month, in what year, and at what time of the day or year, the act complained of was committed. When the person accused (or his vakeel, if he be allowed to appear by a vakeel) is brought before them, they are to enquire into the truth of the charge, by examining the parties and witnesses; and committing their depositions to writing. The prosecutor and witnesses are to be examined upon oath, or under the solemn declaration prescribed, in similar cases, for parties and witnesses in the Civil Courts, if they shall be of a rank or cast, which according to the prejudices of the country, would render it improper to compel them to take an oath. But the prisoner is not to be sworn to the truth of his answer, or defence: and the magistrates are strictly enjoined to satisfy themselves that all confessions made by prisoners are free and voluntary. When a prisoner confesses before them the crime or misdemeanor of which he is accused, or confirms any former confession, they are directed to have such confession, or confirmation, witnessed by as many of their officers, or other creditable persons, who may be present at the time, as the Mahomedan law requires to give it validity: and if the case be referrible to the court of circuit, to cause such witnesses to be in attendance at the next session of that court. The magistrates are likewise directed, notwithstanding

the magistrates were instructed, by a circular order of the Nizamut Adawlut, under date July 1800, to cause all confessions to be attested generally by four, or at least by three, and respectable witnesses, who can read and write.

such

such confessions, invariably to summon the witnesses to the commission of the crime or misdemeanor, alleged against the prisoner; and to bind over such witnesses also to attend the court of circuit, (if the case be referrible to that court) that they may be examined, in the same manner as if the prisoner had denied the charge. The magistrates are further required to take special care, that persons apprehended are not made to suffer corporal punishment, or otherwise ill treated, under the pretence of compelling them to answer truly to questions put to them, or any other pretext whatever. All depositions taken before the magistrate, are to be written on separate papers, signed and attested, and arranged according to their respective dates. In trials referred to the court of circuit, all papers written in any other language than the Persian, are to be accompanied with a translation in that language;* and the following general rules are to be observed in the examination of parties and witnesses, as well before the magistrates, as before the courts of circuit.

R. I. S. 1793, § XV, XVI.
C. P. R. VI, 1803, § XV, XVI.

Rules concerning depositions taken before magistrates.

" ALL examinations of parties, and witnesses, are to be taken down in the language and character in which the person examined may desire to have the same recorded; and such person, whether party or witness, is to be allowed to read the same when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the judge, magistrate, or other officer, before whom such examination may have been taken, is to certify the same under his official signature on the original record; as well as on a Persian translation thereof, to be annexed to the original examination; (in case the same may have been taken down in any other language than the Persian;) that the proceedings may be complete for the perusal of the

R. IV, 1797, § VII.
C. P. R. VII, 1803, § XVIII.

Rules for examination of parties and witnesses before the magistrates and courts of circuit.

* That part of Section XXIII, Regulation IX. 1793, (re-enacted for the ceded provinces by Section XXII, Regulation VI, 1803,) which directs an English record of all complaints, and the orders upon them, has been found of little use; and may be considered obsolete in practice.

law officers of the court of circuit, as well as those of the Nizamut Adawlut, in the event of the trial being referred to that court. In the examination of witnesses, leading questions, suggesting an answer, or having tendency to such suggestion, are to be carefully avoided; and the interrogatories to them are to be proposed in such general terms as may bring forth all the information they possess, and lead to a discovery of the truth. With this view, the parties are to be allowed to cross examine the witnesses, and the judge or magistrate should also cross examine them, when necessary, for the same purpose. All examinations of parties and witnesses, besides the name of the person examined, are to specify the name of his or her father, and if a married woman, the name of her husband; also the religion, cast, profession and age of the party or witness; and the village and pergunnah in which they reside. When any stolen property, or instrument of violence, stated to have been found upon the prisoners, or in their houses, is produced before the magistrate,* or court of circuit, the prosecutor, and any witnesses brought to give evidence thereupon, are to be carefully examined relative to the identity of such property, or instrument, recognised by them; and the circumstances of the same having been found upon the prisoners, or in their houses. The principle of this rule is to be further applied in all instances of circumstantial evidence to which it may be applicable. With a view to impress upon the witnesses the necessity of caution and accuracy in delivering their evidence, it is the duty of the Mullah Koranee, or of the Brahmin, to repeat aloud to them, in the language which they best understand, the following admonition, immediately after they shall have sworn respectively; viz. "In delivering your evi-

* The magistrates and police officers are enjoined, by Section VII, Regulation XIV, 1793, "to use all diligence to recover stolen property; and the latter are authorised and required to make strict search in any houses, or premises, in which, on the oath of the parties or on other credible information, they may suspect such property to be concealed."

dence under the oath now administered. you are required to declare the truth, the whole truth, and nothing but the truth! you are carefully to distinguish what you personally know as an eye-witness, or otherwise, from what you may have heard from others; and are solemnly bound to answer all questions put to you on the trial before the court, without any regard to the prosecutor or prisoner, to the best of your information and belief."

When the magistrate has completed his inquiry, if the case be such as he is authorized to determine himself, without reference to the court of circuit, he is empowered to pronounce sentence of acquittal and discharge, or of conviction and punishment, under the restrictions already stated. In charges of a more heinous nature, such as, on conviction, subject the offender to penalties, beyond what the magistrate is authorized to inflict; the following rule is prescribed. "If it shall appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed; or that there is no ground to suspect him to have been concerned in the committing of it; the magistrate shall cause him to be forthwith discharged; recording his reasons. If, on the contrary, it shall appear to the magistrate that the crime or misdemeanor was actually committed; and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it; the magistrate shall cause him to be committed to prison, or held to bail, (according as the offence may be bailable or not) to take his trial at the next session of the court of circuit; and shall bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence." It is further directed, that "in all cases of a prisoner being com-

Sentence to be
pronounced by the
magistrate in
cases which he
is authorized to
determine.

Rule to be ob-
served by the
magistrate in
cases referable
to the court of
circuit.

R. IX, 1793, §
V.
C. P. R. VI,
1803, § V.

R. IX, 1796, §
II.
C. P. R. VI,
1803, § XXXII.

* The court of Nizamut Adawlut having observed, that in many instances distinct charges, presented against prisoners by separate prosecutors, were blended and proceeded upon by the magistrates and courts of circuit in one trial, and being of opinion, that trials upon distinct charges, especially where the prosecutors are also distinct, should be kept separate, the magistrates and courts of circuit were instructed accordingly by a circular order dated the 24th March 1796.

Prisoners committed or held to bail, for trial before the court of circuit, to be questioned respecting their witnesses.

mitted, or held to bail, for trial before the court of circuit; the magistrate who shall order him to be so committed, or held to bail, shall immediately, after passing such order, question the prisoner whether he wishes to have any witness or witnesses examined in his defence before the court of circuit; and, in the event of his answering in the affirmative, shall cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or in the event of the prisoner's replying in the negative, shall cause his reply to that effect to be recorded on his proceedings, for the information of the court of circuit."

R. IX, 1793, § XII.
R. IX, 1796, § III.
C. P. R. VI, 1803, § XII and XXXIII.

And all witnesses named by them, at any time before the session of the court of circuit, to be summoned.

Also, that "in the event of any person, whether committed or held to bail, for trial before the court of circuit, at any time before the session of that court, desiring the examination of any witness or witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrates shall be careful to cause the attendance of such witnesses; as well as of those before named; at the time fixed for the trial of the party who may desire their examination."

R. IX, 1793, § VII.
B. R. XVI, 1795, § IV.
C. P. R. VI, 1803, § VII.

In what cases bail not to be admitted.

It is declared by Section VII, Regulation IX, 1793, (extended to the province of Benares, with an additional clause including arson, by Section IV, Regulation XVI, 1795; and re-enacted for the ceded provinces by Section VII, Regulation VI, 1803;) that "persons accused of murder, robbery, setting fire to any house or village, * house-breaking, theft, or counterfeiting of the coin, provided there shall appear sufficient grounds for committing them for trial, shall not be admitted to bail."

* This offence is omitted in Regulation IX, 1793, for Bengal, Bahar, and Orissa; but being included in the subsequent regulations for Benares and the ceded provinces, it is evident that the omission was accidental. In answer to a question respecting the discretion left to the magistrates in cases not expressly declared bailable, or excepted from bail, by the regulations, the Court of Nizamat Adawlut stated their opinion, that the magistrates have a discretionary authority in such cases, but that in the exercise of it, they should be guided by the spirit of the rules prescribed for receiving bail or not, in cases of a similar nature.

But

But the following explanation of this rule is contained in Section IX, Regulation IX, 1807.

"IN explanation of Section VII, Regulation IX, 1793, and Section VII, Regulation VI, 1803, it is hereby declared, that no species of homicide, except murder, is included in the provisions, which forbid the admission to bail of persons accused of murder. If the charge be for manslaughter, or any species of illegal homicide not involving the crime of murder, the magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he may judge proper, on consideration of the circumstances of the case, and of the condition and character of the party accused. After the enquiry directed by Section V, Regulation IX, 1793, and Section V, Regulation VI, 1803, if the magistrate shall be of opinion, that the facts and circumstances in evidence do not establish the crime of murder, but that there is sufficient ground for bringing the person complained against to trial, before the court of circuit, on a charge of manslaughter, or other culpable homicide, the party shall be held to bail; for appearance before the court of circuit; but the magistrate is authorized to release the accused, if the homicide in which he may appear to have been concerned, shall, from the whole of the evidence, be clearly shewn to have been accidental or justifiable, under the Mahomedan law and regulations. The principle of the preceding clause, is also declared applicable to persons appearing, from the magistrate's enquiry, to have been only privy, or incidentally accessory, to crimes of a heinous nature, without being concerned therein, either as principals, or as aiding and abetting, procuring or instigating, the perpetration thereof; and in all cases, whether of trial before the magistrate or before the court of circuit, if the admission of bail have not been prohibited by the regulations, and the bail tendered shall appear sufficient for securing the appearance of the party accused, he shall be admitted to bail, until sentence

R. IX, 1807, § IX.
Explanation of preceding rule.

In cases of homicide, not involving the crime of murder.

In cases of persons only privy, or incidental, accessory to, crimes of a heinous nature.

General rule, if the admission of bail have not been prohibited by the regulations.

Special rule for admission of bail, by order of the court of circuit, in cases declared not bailable by the regulations.

Courts of circuit may also reduce the bail required by magistrates, if excessive.

R. IX, 1807, § X.

Form of bail-bond to be taken from persons held to bail for trial before the courts of circuit.

R. IX, 1793, § XVIII.

Extended to Benares, by B. R. XVI, 1795, § IV, and re-enacted for ceded provinces, by C. P. R. VI, 1808, § XVIII. Commitment of landholders to be notified to collectors.

sentence be passed upon the charge against him. Moreover, in special instances, wherein the court of circuit, on a report from the magistrate, or on other satisfactory information before them, may deem it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the regulations, that court is declared competent to instruct the magistrate to accept sufficient bail, instead of keeping the accused in confinement, whilst the charge against him is under trial. The court of circuit may likewise, in all bailable cases, wherein the bail required by the magistrate shall appear excessive, direct the magistrate to receive such bail as may be deemed sufficient to answer the purpose intended by it.* Section X, of the regulation last mentioned, also prescribes the form of bail-bond to be taken, in all cases, from persons held to bail for trial before the courts of circuit.* If a magistrate commit any amindar, independent talookdar, or other actual proprietor of land,† to be tried before the court of circuit, he is to notify the commitment to the collector of the district, that if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender.

* It appearing to have been the practice of some of the magistrates to confine in fetters all persons ordered for trial before the courts of circuit, and not admitted to bail, or unable to give the bail required from them; whatever might be their situation in life, or the nature of the offence charged against them; the courts of circuit were instructed by the Nizamut Adawlat, on the 4th January 1805, to notify to the magistrates of their respective divisions, "that such practice, with respect to persons charged with offences not of a heinous nature, or who may be committed to prison from inability to find sufficient bail, being unnecessary to secure their appearance at the time of trial (the only object of personal custody in such cases) and it being the evident intention of the regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint, or personal ignominy, than are unavoidable for his safe custody and appearance at the time of trial; they are required to be careful in observing this principle; and consequently are not to confine in fetters any person for trial before the court of circuit, who may be charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, may not have been charged with a heinous offence; such as, from the nature of the circumstances of the case, considered with the prisoner's condition of life, may appear to render the use of irons indispensably requisite for his secure custody."

† Proprietors of land, paying revenue to Government, appear to be intended by the regulation; the object of which also extends to sudder farmers, answerable for any part of the public revenue.

THE magistrates, on receiving notice from the judges of the courts of circuit, of the time by which they expect to arrive at their respective stations, are to issue a written publication, requiring, by a fixed date, the attendance of all persons admitted to bail, for trial before the court of circuit, as well as of all prosecutors and witnesses bound over to appear before that court; under penalty of forfeiting their recognizances. A copy of this publication is to be sent to the Canzee of each pergunnah; and to be fixed up, in some public place, in the principal town or village of each pergunnah: or, in the principal cities, at the offices of the cutwal, and darogahs of wards. On the arrival of the judges of circuit, the magistrates are to deliver to them an English and Persian calendar of the prisoners committed, or held to bail, to take their trial before the court of circuit; prepared in a prescribed form; and specifying, besides the names of the prosecutors and prisoners, a brief statement of the charge and when preferred; the date on which each prisoner was apprehended; the names of the witnesses; and an abstract of proceedings, stating on what grounds and date, the prisoners were committed, or held to bail, for trial before the court of circuit. This calendar is to be accompanied with the magistrate's proceedings on each charge; and all material documents relative thereto. To furnish the courts of circuit with the fullest information on the non-attendance of any absent witness, and to enable them to ascertain that all due measures have been taken to cause the attendance of the whole of the witnesses named by the prosecutors and prisoners, it is further directed, that the original returns made to the magistrate, by the nazir, and person deputed on his part to serve the summons upon any witness not in attendance, be submitted to the court of circuit, with the calendar abovementioned; and that the nazir, and person so deputed, be kept in attendance to answer any interrogatories which the court may judge it necessary

R. IX, 1793, § XI and XIII. Extended to Benares, by R. XVI, 1796, and re-enacted for the other provinces, by C. P. R. VI, 1803, § XI. Publication to be issued on notice of expected arrival of the court of circuit.

R. IX, 1793, § XIII and XIV. C. P. R. VI, 1803, § XIII and XIV. Calendar of persons committed or held to bail, for trial before the court of circuit, to be submitted to that court, with the magistrate's proceedings on each charge, and all relative documents.

R. IX, 1796, § IV. C. P. R. VI, 1803, § XIV. Also returns to summons of absent witnesses.

R. IX, 1793, §
XVII.

C. P. R. VI,
1803, § XVII.
R. IX, 1807, §
XXII.

Further calen-
dars to be sub-
mitted by ma-
gistrates.

1. Of persons
discharged from
want of evi-
dence.

2. Of persons
tried for offen-
ces cognizable
by the magis-
trate and his
assistant.

fary to put to them. The magistrates are also to lay before the judges of circuit, with their proceedings and all original papers relative thereto, a second calendar of persons apprehended by them, upon charges cognizable by the court of circuit, but discharged, from want of evidence, since the preceding session; and a third calendar, of persons tried for crimes or misdemeanors cognizable by themselves, and their assistants; specifying the charge against each prisoner, and the sentence passed thereupon. *

Monthly re-
ports to be
transmitted by
the magistrates
to the Register
of the Nizamut
Adawlut.

THE magistrates are required to transmit to the register of the Nizamut Adawlut the following monthly reports, drawn out according to the forms prescribed for them respectively. †

R. IX, 1793,
§ XXVIII.
C. P. R. VI,
1803,
§ XXVII.

1. A report of persons apprehended in each month; specifying the name, charge, and date of apprehension, and whe-

* On the 1st November 1804, the magistrates were instructed, by a circular order from the Nizamut Adawlut "to lay before the judge of circuit, at each jail-delivery, a report of all persons confined by order of the magistrate until they find security for their good behaviour." And on the 8th August 1807, they were further directed to distinguish in such reports, "the names of prisoners who have been confined more than six months, without confirmation of the magistrate's order by the court of circuit; submitting, at the same time, an abstract statement, in Persian or English, specifying the names of the prisoners, the period of their confinement, and the circumstances of each case;" together with their proceedings on the commitment, and security required. The court of Nizamut Adawlut added, that "the judge of circuit, under the powers vested in him by Regulation IX, 1807, after inspecting the proceedings, and making any further inquiry deemed necessary, will pass such order as may appear just and proper; either for the release of the prisoner on his Mochulka, or for reducing the amount of security required (if this appear excessive); or for the further detention of the prisoner until he give the security required: and, in the latter case, the prisoner should not afterwards be released without security, unless authorized by the court of circuit on report of the magistrate." Section XI, Regulation LIII, 1803, contains further instructions to the magistrates concerning prisoners detained for security, under orders of the courts of circuit or Nizamut Adawlut.

† The magistrates were informed, by a circular letter from the Register of the Nizamut Adawlut, under date the 8th June 1796, that they were at liberty to transmit the detailed monthly and half-yearly reports required by the regulations, in Persian, with an English Abstract.

ther the person has been released, punished, or ordered for trial before the court of circuit.

2. A report of casualties, (viz. removals to other stations, deaths, and escapes;) and of prisoners released, in each month.

R. IX, 1799.
§. XXX.
C. P. R. VI,
1803.
§. XXIX.

3. A report of prisoners sentenced by the court of circuit in the current month.

4. A report of prisoners, whose trials are under reference to the Nizamut Adawlut.

5. A report of sentences received from the Nizamut Adawlut in the present month.

6. A report of prisoners under charge of the magistrate, to be tried by the court of circuit.

THE whole of the above reports are to be dispatched so as to reach Calcutta by the 20th of the ensuing month. The magistrates are also to transmit to the Nizamut Adawlut half yearly reports of convicts in confinement, under sentence, to be dispatched within twenty days after the completion of the session of the court of circuit. And in the month of January of each year, two annual reports are to be furnished by them; viz. a report of all criminal cases depending before the magistrate, and his assistants; specifying the names of the accused; whether in confinement or under bail; the crime charged; date of charge; date of apprehension, or first appearance of the accused; and explanations in any instances of considerable delay.—2dly. An abstract statement of the number of robberies and other crimes of a heinous nature, ascertained by the police officers, or otherwise, to have been committed within their respective jurisdictions, in the preceding English year; the

R. IX, 1793.
§. XXX.
C. P. R. VI,
1803.
§. XXX.
Half yearly reports to be sent to the Nizamut Adawlut.

Annual reports to be furnished to Nizamut Adawlut.
R. IX, 1807.
§. XXV.

R. IX, 1807.
§. XXVI.

the number of persons, known, or supposed, to have been concerned in the commission of such crimes; and the number apprehended and convicted, or committed for trial before the courts of circuit. To enable the magistrates to furnish this statement they are to require from their police officers a monthly report of heinous crimes committed within their respective jurisdictions; the number of persons known, or supposed to have been concerned in the commission of them; and when any have been apprehended, the number and names of the persons apprehended: remarks on the increase or decrease of any particular designation of crime, on the greater or less number of persons concerned, or apprehended, or on any other circumstance which may call for observation, are to be also inserted in the report: the object of which is to inform the Nizamut Adawlut of the crimes which may continue to prevail in different parts of the country, and of the efficiency of the measures adopted for the suppression of them. *

R. IX, 1793, 1
XX, XXI.
Extended to
Benares by B.

THE magistrate is required to visit the jail at his station, at least once in every month; and to redress all well founded

* With a similar view, and to enable the courts of circuit to judge of the progress made towards the suppression of crimes, the magistrates were instructed by a circular order from the Nizamut Adawlut, dated the 1st November 1804—"to lay before the judge of circuit, at each jail delivery, a statement of crimes committed within their respective jurisdictions; according to the form transmitted to them with the Court's circular order of the 7th March 1803;" being the same as that since included in Section XXVI, Regulation IX, 1807. The accuracy of such statements cannot be relied upon; but they afford some criterion by which to judge of the crimes most prevalent. The following is an abstract of the statements received by the Nizamut Adawlut, for the provinces of Bengal, Bahar, Orissa, and Benares.

Year	Robbery and murder.	Robbery without murder.	Assaults and violent assaults.	Murder.	House-breaking.	Thefts of considerable amount.	Receiving stolen goods.	Asson.	Rape.	Adultery.	Perjury.	Fugitives.
1803	155	1443	556	398	998	1499	255	107	116	174	113	51
1804	138	1346	310	399	1116	1589	334	106	80	101	131	53
1805	137	1294	271	436	1249	1708	382	109	86	123	180	57
1806	97	1258	316	438	1139	1571	306	87	86	124	149	61
1807	160	1378	268	354	1071	1677	319	82	80	114	142	68

complaints

complaints of ill treatment, which may be preferred by the prisoners against the jailer, or any officers having charge of them. He is also directed to be particularly attentive to the health and cleanliness of the prisoners; and to see that the surgeon of the station attends and administers to the sick. Separate apartments in the jail are to be allotted for the different descriptions of prisoners; * as well as to divide the male from the female prisoners; and the magistrates are enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, from being practised, in their respective jails. To facilitate the re-apprehension of convicts sentenced to imprisonment for life, who may escape, all convicts of this description are to have their name, crime, date of sentence, and designation of the court by which it may have been passed, inscribed on their foreheads, by the process termed *godna*, which leaves a blue mark that cannot be effaced without tearing off the skin. †

The

R. XVI. 1796, and re-enacted for the ceded provinces, by R. V. 1803, § XX. XXI. Dis. et om. to magistrates relative to jails, and care of prisoners at the respective stations.

R. IV. 1797, § XI. C. P. R. VII. 1803. XXXV. Inscription to be marked on foreheads of convicts sentenced to confinement for life.

* On the principle of this rule, viz. that persons convicted of petty offences only should not be made to associate with heinous offenders, whereby a principal object of their imprisonment, their correction and amendment, would be defeated, the court of Nizamut Adawlut directed, by a circular order dated the 4th April 1807, that prisoners sentenced to imprisonment by the magistrates should be kept separate from convicts sentenced by the court of circuit, or Nizamut Adawlut, when employed on the public roads, or on other public works. Such employment sometimes forms part of the sentence upon the prisoner. But the Nizamut Adawlut having ascertained from their law officers, that the employment of all convicts sentenced to imprisonment, in the repair of the public roads, or in other similar public works, is consistent with the Mahomedan law, directed, on the 6th April and 10th August 1796, that all convicts, under sentence of imprisonment, should be so employed, excepting persons who may be incapable of bodily labour, from age, sickness, or other infirmity; or whom, from their rank and situation of life, it may appear improper to employ in this manner: in which case the magistrates are to apply for the special instructions of the Nizamut Adawlut; unless (as explained on the 28th March 1807,) the exemption from hard labour be expressly provided for in the sentence.

† In consequence of the frequent escape of convicts whilst employed on the roads, or in other places out of jail, under the custody of a single sepoy or burkundaz, the court of Nizamut Adawlut, on the 14th November 1798, prohibited the employment of any convicts, out of jail, under the custody of a single guard; and directed that the convicts under charge of the several magistrates be employed, on all occasions, as far as possible, collectively; under the guard of as many sepoy and burkundazes, as can be spared

Provisions for the punishment of convicts who escape, already stated.

R. II, 1799, § VI.

C. P. R. VIII, 1803, § XXIII. Guards having custody of convicts who escape, how to be proceeded against, for neglect, connivance or other criminality.

C. P. R. VIII, 1803, § XIV, C. 5, 6. R. XI, 1806, § X.

Extended to guards having custody of prisoners who escape before conviction.

But not applicable to military guards.

Such guards how to be proceeded against, for trial by a court martial, in all cases involving breach of military duty.

The provisions enacted by Section IX, Regulation LIII, 1803, for the punishment of convicts who may effect their escape during the period of their sentences, and be re-apprehended, have been already stated.* By Section VI, Regulation II, 1799, (re-enacted for the ceded provinces by Section XXIII, Regulation VIII, 1803,) it is further provided, that "all guards of whatever description, having the custody of convicts who escape, and who may appear, on the magistrate's inquiry, to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and should any connivance, or further criminality, appear against them, are to be committed or held to bail, according to the circumstances of the case, for trial before the court of circuit; that on conviction they may receive the punishment which the law directs." This provision has been since extended to guards in charge of prisoners who may escape from their custody before conviction. But it is not to be considered applicable "to military guards from the provincial battalions (while such battalions shall continue subject to military law) or from any regular corps of the army. Whenever it shall appear to a magistrate, that a guard furnished by a provincial battalion, or by any regular corps of

spared from other duties for the purpose. By the circular orders of the Nizamut Adawlut, issued on the 21st June and 19th July 1803, the magistrates were further restricted from the employment of any convicts in the gardens of individuals, or on other private works, without the sanction of the courts of circuit; who are authorized to permit the employment of part of the convicts, in particular instances, when they cannot be all employed on the public roads, or other public works, in any works undertaken by individuals, which may appear to combine public utility with private convenience.

* In page 422. On the 18th September 1804, the magistrates were further instructed by the Nizamut Adawlut to transmit to that court an early report of the escape of convicts, sentenced by the courts of circuit or Nizamut Adawlut, with information of the measures taken to re-apprehend the persons escaped, as well as of any proceedings held under Section VI, Regulation II, 1799, respecting the guards from whose custody the escape may have been effected. It may be added, that an instance having occurred of a prisoner's escape from jail, by feigning himself dead, the Nizamut Adawlut instructed the several magistrates, on the 29th June 1804, not to allow the removal of the bodies of prisoners, stated to have died in jail, until an inquest shall have been held upon them, by the Native Surgeon, and such other persons as the magistrate shall appoint.

the army, has been guilty of wilful neglect in guarding the prisoners under his charge, or in conniving at the escape, or the attempt to escape, of any prisoner; or of any other act of a criminal nature in the discharge of his duty; the magistrate shall cause the offender to be delivered over to the officer commanding the provincial battalion, or the detachment to which he may belong; with a charge in writing; that he may be tried, and punished on conviction, by a court martial. The same mode of proceeding is directed to be observed with respect to any other offence involving a breach of military duty, and properly cognizable by courts martial; but shall not be held applicable to any criminal charge against such guards or other sepoys, whether belonging to the provincial battalions or regular corps of the army, which may not involve a breach of military duty, and the cognizance of which may therefore appertain to the civil courts."

SUBSISTENCE money, at an established rate, is allowed to all prisoners from the time of their apprehension to the date of their discharge.* For the maintenance of prisoners who have been some time in confinement, until they can obtain employment, or procure for themselves some other means of livelihood, the magistrates are authorized to pay to all persons released from jail, after an imprisonment of six months, or upwards, under sentence, and who may appear to be in need of such assistance, a sum, not exceeding five rupees, sufficient to maintain them for one month. The magistrates are further authorized to pay to all prosecutors and witnesses, who may appear to be in need of such assistance, a daily allowance of two annas each, during their attendance on the court of cir-

R. IX, 1793,
§ XXVII.
C. P. R. VI,
§ 3, § XXIV.
Subsistence money allowed to prisoners.

R. IX, 1793,
§ XXV.
C. P. R. VI,
§ 3, § XXV.
Persons confined for six months to receive on their discharge a sum, not exceeding five rupees, to maintain them for one month.

R. IX, 1793,
§ XXVI.
C. P. R. VI,
§ 3, § XXVI.
Allowance to indigent prosecutors and wit-

* Two and a half puns of cowries, or cucha pice, per diem, are the usual allowance. But it may be reduced to two pice, or puns, or raised to three pice or puns, (about three quarters of an anna) when the magistrate may judge it proper, on consideration of the cheapness or dearness of provisions. A blanket and some other articles of bedding and cloathing are also provided for each convict.

hires, during
their attendance
in the court of
circuit.

R. IX, 1795,
§ XXIV.
B. R. XIV,
1795, § IV.
C. P. R. VI,
1803, § XXIII.
Reward to be
paid for every
robber appre-
hended and de-
livered up to
the magistrate.

cuit; * including also as many days as may be sufficient to come from, and return to, their respective houses. In addition to these payments, the magistrates are empowered to give a reward of ten sicca rupees for every dacoit, or robber, that may be apprehended and delivered into their custody, to be paid on the conviction of the offender. And special rewards, to a much larger amount, are frequently authorized by Government, on the suggestion of the magistrates or criminal courts, for the apprehension of known offenders; especially the findars or leaders of gangs of robbers, the seizure of whom is of the greatest importance to the peace of the country, and to the lives and property of the inhabitants. †

R. VI, 1796, §
III, IV.
C. P. R. VIII,
1803, § XX,
XXI.
Provision for
pardon of ac-
cessaries to
heinous crimes,
on condition of
a full disclosure
of circum-
stances, and
names of per-
sons concerned

PROVISION is made by Sections III and IV, Regulation VI, 1796, (re-enacted for the ceded provinces by Section XX and XXI, Regulation VIII, 1803,) for the pardon of accessaries to crimes of a heinous nature, on condition of their making a full disclosure of every circumstance within their knowledge, relative to the commission of the crime, and several persons concerned in it;

* This allowance is also occasionally paid to indigent prosecutors and witnesses attending the inquiry into criminal charges before the magistrate.

† By an order of the Governor General in Council, passed on the 17th August 1798, the magistrates are restricted from paying any other than the fixed rewards authorized by the Regulations, without a certificate from the court of circuit before whom the persons apprehended have been tried. And the judge of circuit is directed, after inspecting the orders of Government and proclamations of the magistrate, to certify the names of such persons as may appear to have established their claim to particular rewards, offered by the magistrate, with the sanction of Government. The system of granting rewards, to encourage the discovery and apprehension of heinous offenders, is conformable to the laws of England (vide Blackstone, B. IV, p. 294,) and appear to be essentially necessary in a country where the police is imperfect; and the inhabitants are generally disinclined to complain, or give information, against robbers of the most dangerous character, whose revenge they dread, in the event of their not being convicted, or being released at a future period. Objections have been stated against the fixed reward of ten rupees, as being too general, and encouraging abuses by a class of men, called goindahs or informers, who make it their profession to seek for and communicate information against robbers, in expectation of the reward on their conviction. But though abuses are sometimes committed by persons of this description, the attention of a vigilant magistrate is sufficient to check them, by detection and punishment; and under proper control they are capable of being most useful assistants to the officers of police.

such

such as may lead to the apprehension or conviction of the principal offender or offenders. The magistrates and judges of circuit are to report to the Nizamut Adawlut whenever it may appear expedient to tender an offer of pardon for this purpose; communicating, at the same time, all the information they may possess, respecting the circumstances of the case. The court of Nizamut Adawlut, if they concur in the expediency of the proposed offer of pardon, are to submit the same to the Governor General in Council; and if authorized by him, on the condition of its being fulfilled, are to confirm it by a written certificate, under the signature of their register and the seal of the court. *

REGU-

* The following circular letter, on the subject of the Regulation cited, was written to the courts of circuit, (and directed to be communicated to the magistrates within their respective divisions) by order of the Nizamut Adawlut, on the 2d July 1802.

"The evidence of accomplices being insufficient, under the Mahomedan Law, to prove any criminal charge, though admitted in some degree to corroborate other evidence; it has appeared to the Court of Nizamut Adawlut, from the trials which have come before them, in which an offer of pardon has been made in pursuance of Regulation VI, 1796, for the conviction of principal offenders, that such offer is seldom of any effect for the purpose intended; whilst, at the same time, the frequent pardon of acknowledged accomplices in murder, gang robbery, and other heinous crimes, is obviously objectionable and repugnant to the ends of justice. The court have therefore determined, in the exercise of the discretion vested in them by the above regulation, to restrict their applications to the Governor General in Council for an offer of pardon to accomplices as follows.

First. To cases wherein the zillah or city magistrates may judge it advisable to propose an offer of pardon, on the conditions specified in Section III, Regulation VI, 1796, to an accomplice in any of the crimes therein described, with a view to the discovery and apprehension of the principal, or several of the persons by whom such crimes may have been committed, or for the discovery of facts and circumstances, which may assist in the conviction of the principal offenders.

Secondly. To cases in which the judges of the courts of circuit may deem it expedient, on consultation with their law officers, to tender an offer of pardon, on the prescribed condition, to any prisoner charged as an accomplice, with a view to have his evidence against the principal offender, or offenders, or for any cause which, in the judgment of the court of circuit, may render it advisable to propose such offer of pardon, under the provisions contained in Regulation VI, 1796.—In the cases last stated, the judge of the court of circuit, before whom the trial may be held, will, of course, address the Nizamut Adawlut, as directed by Section IV, Regulation VI, 1796; and in the former cases, the zillah and city magistrates will make their reports to the court of Nizamut Adawlut as hitherto; but, upon obtaining the sanction of the Governor General in Council, to an offer of pardon, in such cases, viz. when the party

Provisions for compelling appearance of persons charged with criminal acts, and for punishing resistance to process of the magistrates and police officers.

R. XI, 1796, § IV, V, VI.
C. P. R. III, 1804, § IV.
Magistrate how to proceed when a person, against whom any criminal process may be issued, shall abscond or conceal himself.

REGULATION XI, 1796, and Sections IV, V, of Regulation IX, 1801, (re-enacted for the ceded provinces by Sections II, III, IV, V, of Regulation III, 1804) provide for an attachment of property to compel the appearance of persons, charged with acts of a criminal nature, who may abscond, or otherwise evade the process issued against them; as well as for the punishment of resistance to the processes of the zillah and city magistrates, or officers of police. If any person charged with an offence, of a criminal nature, abscond, or conceal himself, so that upon a process issued against him, by a zillah or city magistrate, or a police officer, he cannot be found, the magistrate is to cause a written proclamation; in the Persian, and Bengal or Hindoostanee languages, requiring [the absent party to appear and answer the charge against him within a fixed period, not less than one month; to be publicly read and proclaimed by beat of drum; and to be affixed in some conspicuous part of his chucherry as well as on the outer door of the house in which the party may have usually dwelt; or some conspicuous place in the village, in which he may have generally resided. If the party shall not

party is to be examined, as an informer, not as a witness, instead of leaving it to the court of circuit to examine him, they are themselves to take his examination, without oath, and to submit it, with the proceedings on his trial, to the court of circuit, where if he shall be found to have fulfilled the condition of his pardon, by a full disclosure of every circumstance within his knowledge, relative to the commission of the crime and the several persons concerned in it, are to report the same to the court of Nizam Adawlut, for the purpose of obtaining a confirmation of his pardon in the mode prescribed by Section III, Regulation VI, 1796."

"The court desire you will communicate the foregoing remarks and instructions to the several magistrates within your division; at the same time advising them that they are meant to be applied strictly to accomplices, or persons present at, aiding, or abetting, the commission of crimes, (without being the chief actors or actual perpetrators;) and are not intended to be applicable to accessaries, either before or after the fact, who may not have been present when the crime was committed, or by any means concerned in the perpetration of it. For any such accessaries, whose evidence can tend to the conviction of offenders charged with the crimes specified in Section III, Regulation VI, 1796, and for whom the zillah and city magistrates, or courts of circuit, may judge it advisable to propose a conditional offer of pardon, under the provisions in that Regulation, the court will have no objection (provided the report before them of the circumstances of the case may appear to require it) to apply for the sanction of the Governor General in Council to such pardon as heretofore."

appear

appear and deliver himself up within the period fixed by such proclamation, the magistrate, on receiving the nazir's return to that effect * is to order the attachment of any land or other real property held by the absentee within his jurisdiction, to be made by the collector of the district. In the event of the attendance of the party, for whose appearance the attachment was ordered, the magistrate is to direct, by a precept to the collector, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of it. Should the absentee neglect to attend for six months after the lands have been put under attachment, the magistrate is to report the case to the Governor General in Council, who will pass such order upon it, and upon the future disposal of the lands, as he may judge proper. If any person unable to the authority of a zillah or city magistrate, or police officer, shall resist, or cause to be resisted, any warrant, order, or other process, of such magistrate or police officer, the magistrate of the zillah or city in which such resistance may have been made, on the same being charged upon oath, (or under a solemn declaration taken instead of an oath) shall, if practicable, cause the party accused to be apprehended, and brought before him to answer the charge. If the party shall abscond or conceal himself so that he cannot be apprehended; or if, on any account, he cannot be immediately apprehended; the magistrate is to cause a written proclamation to be issued, in the manner above stated with respect to other cases of evasion of process. If the party shall not, within the period fixed by the proclamation, appear to answer the charge, or if he shall appear, or be apprehended, and after receiving his answer, and hearing the evidence he may adduce in his defence, it shall be proved to the satisfaction of the magistrate, that he is guilty of resistance of process, the magistrate is to pass judgment against

R. XI, 1796, § II.
R. IX, 1801, § V.
C. P. R. III, 1804, § II.
Proceedings to be held respecting persons charged with resistance of process.

* Proof of the proclamation having been duly made, as prescribed by the regulations, is, of course, to be also taken, and recorded on the magistrate's proceedings, in the case referred to:

Sentence to be passed, on conviction, by the magistrate.

Referrable in certain cases, to the court of Nizamut Adawlut.

R XI, 1796, § III.
C. P. R. III, 1804, § III.
In what cases the sentence of the Nizamut Adawlut is final, or subject to the orders of the Governor General in Council.

him in the following manner: In cases not attended with any aggravating circumstances, wherein the magistrate shall judge it sufficient to inflict the punishment which he is authorized to inflict for petty offences, he is authorized to pass sentence accordingly; subject to a revision of his proceedings by the court of circuit, under the general power vested in that court. If the circumstances of the case appear to require a more exemplary and severe punishment than what the magistrate is authorized to inflict, he is to refer his proceedings for the sentence of the Nizamut Adawlut. If the offender be a landholder, or sudder farmer of land, situated within the zillah or city in which the resistance has been made, the magistrate is, at the same time, to declare such land, or farm, forfeited to government, and to cause the immediate attachment of it by the collector of the zillah. If the offender be not a landholder, or sudder farmer, the magistrate is to declare him liable to the payment of such fine to government as may appear proper, on consideration of his offence and condition in life, and to cause the attachment of any property appertaining to him for the recovery of it. The court of Nizamut Adawlut, in all cases wherein the forfeiture of the offender's land or lease may appear to them too severe a punishment for the offence, are authorized to commute the same for such fine to government as they may judge adequate; and to order the attachment of the lands to be taken off on payment of it. The sentence of the Nizamut Adawlut is declared final, upon references made to that court under the rule above stated, in all cases of fine, imprisonment, or corporal punishment. But if the magistrate's judgment of forfeiture be confirmed by the Nizamut Adawlut, the proceedings upon the case are to be transmitted to the Governor General in Council; who will determine whether the sentence of forfeiture shall be put in force, or commuted to a fine, or otherwise, and if he order the land or lease of the offender to be forfeited, will, at the same time, cause the necessary instructions to be issued to the collector for the

the future disposal of the land. That no doubt might be entertained whether persons charged with resistance of process, and apprehended, may be admitted to bail, it has been declared, that persons apprehended on a charge of resistance of process, who may not be accused of any aggravating crime, such as is expressly declared not bailable by the regulations, are to be admitted to bail, until a final decision be passed upon the charge, provided the bail offered by them shall appear sufficient for securing their appearance during the prescribed investigation of the case.

R. IX, 1801, §
IV.
C. P. R. III.
1804, § V.

Persons charged with resistance of process declared bailable; unless charged also with other offences not bailable.

WHEN a warrant, summons, or other criminal process, may be served by a burkundaz, chupprassy, or other public officer, receiving wages from government, (and such officers are ordered to be employed in serving all criminal processes, especially in cases of a heinous nature, as far as circumstances admit) no diet money, or other allowance or gratuity, is to be demanded, or received, from the complainant or accused. The demand or receipt of such, by any public officer, in violation of this rule, is declared punishable as a criminal offence, on conviction before the magistrate, or court of circuit; and the offender is compellable to refund the amount received, besides being liable to immediate dismissal from office. When peons, or other persons, not receiving wages from Government, may be unavoidably employed in serving any criminal process, they are authorized to demand and receive *tullubannah*, (a daily allowance instead of wages) at the rate of two annas per diem (or three annas in districts where such higher rate may be usual and necessary) during the time they may be so employed: but are not to demand or receive more, under the penalties above stated. The *tullubannah*, in such cases, is payable, in the first instance, by the party at whose instance the process is issued, (unless the charge be of a heinous nature, and the magistrate deem it proper that the necessary expense of process be paid on the part of government) subject to re-

R. IX, 1807, §
XIV, Clause 8.

Criminal processes by whom to be served, and what persons forbidden, or authorized, to receive an allowance for serving it.

Penalty for any unauthorized demands or executions.

Authorized allowances by whom payable, and in what cases reimbursement may be adjudged.

re-imbursment from the accused, if the charge be established, under the discretion vested in the criminal courts to adjudge a re-imbursment of costs in particular instances, when it may appear equitable. *

R. L, 1803, §
II.
C. P. R. VIII,
1803, § XXV.

Summonses to witnesses in criminal cases how to be served.

And how far rules prescribed to civil courts, for procuring attendance and evidence of witnesses, are applicable to magistrates and criminal courts.

SUMMONSES to witnesses in criminal cases are to be served by a chupprassy, pcon, or other officer of the magistrate, or by a police officer, instead of being delivered to parties to be served on their own witnesses, as admitted, at the discretion of the judges, in civil cases. In other respects the magistrates and criminal courts are to be guided by the rules prescribed for the civil courts in procuring the attendance and evidence of witnesses; and have the same power of committing to close custody, and fining in a sum not exceeding five hundred rupers, any witness duly summoned, who, after receiving the summons, may not attend, as thereby required, or though attending, may refuse to give evidence and sign his deposition.

R. XIII, 1797,
§ II, III, IV.
C. P. R. XII,
1803, § XVII,
XVIII, XIX.

In what cases, and under what provision, the magistrates are authorized to employ their assistants, in the execution of any part of their prescribed duties.

THE zillah and city magistrates are authorized to employ their assistants (being covenanted servants of the company) in the execution of such part of their prescribed duties, as, from the extent of their general business, or other cause, they may be unable to give due attention to themselves; provided that previously to any assistant's entering upon the exercise of judicial authority, he shall take and subscribe an oath, corresponding with that prescribed to the magistrates. Assistants so authorized and qualified to act as magistrates are to be guided by the regulations in force, as far as the same may be applicable to the duties committed to them: and are vested with the same powers as the magistrate, for the performance of such duties, except that they are not to exercise the additional powers of punishment, which were vested in the magistrates by Section IX, Regulation No. 1807; but are to be governed in their judgments by the restrictions contained in Sections VIII, and IX,

R. IX, 1807,
§ IX.

Limitation of judicial powers to be exercised by the assistant.

Regulation IX, 1793, (re-enacted for the ceded provinces by Sections VIII, and IX, Regulation VI, 1803,) with the following modifications. In the cases of petty offences, such as abusive language, calumny, and inconsiderable assaults or affrays, provided for by the first of these Sections, if it appear proper to impose the fine thereby authorized, in addition to fifteen days imprisonment, both the stated fine and imprisonment may be adjudged; with an eventual commutation of the fine, if not paid, to further imprisonment, for a period of fifteen days; making the entire term of imprisonment, if the fine be not paid, one month of thirty days. In like manner, in charges of petty thefts, provided for by the section last mentioned, if it appear just and requisite, on consideration of the circumstances of the case, to sentence the offender to one month's imprisonment, in addition to the stated corporal punishment of thirty rattans, or of any part thereof, both corporal punishment and imprisonment may be adjudged accordingly. In any case referred to an assistant, wherein the offence proved against the prisoner may appear to require a more severe punishment than he is authorized to adjudge, he is not to pass any sentence; but is to submit his proceedings to the magistrate; who, after holding any further proceedings he may deem necessary, will, if satisfied of the guilt of the prisoner, either pass sentence; upon him, or commit or hold him to bail for trial before the court of circuit, according to the nature and circumstances of the case. Whenever a complaint, or charge, of a criminal nature, is referred by a magistrate to his assistant, the order of reference is to be recorded on the magistrate's proceedings, with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision; or whether the determination upon the charge is to be passed, by the assistant, if it be such as he is authorized to determine, under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings, held by their

Assistant how to proceed, if the case appear to require a more severe punishment than what he is authorized to adjudge.

P. IX, 1807, § XXI.

In what manner the magistrate is to refer criminal charges to his assistant, and in what cases, to examine, or reverse, the proceedings held by his assistant.

their assistants in such cases, and to pass judgment thereupon themselves; and in all instances, wherein the sentence may be passed by an assistant, if the magistrate, on representation made to him, without unnecessary delay, shall see cause to revise the proceedings held by the assistant, and shall disapprove the judgment given by the latter, he is authorized and required to annul the same, and to pass such further sentence, or order, as may appear just and conformable to the regulations. The collector of the tax on pilgrims, at the temple of Juggurnauth, is declared to be, ex-officio, assistant to the magistrate of zillah Cuttack; and competent to exercise all the powers vested in the head assistants to the zillah and city magistrates. The person, by whom these powers may be exercised, is required at all times to give every attention to the religious opinions of the Hindoos, and to the particular institutions of the temple of Juggurnauth, which may be consistent with the general regulations; and with the maintenance of peace and good order at the temple, and in its vicinity; and he shall on no account suffer his peons or ministerial officers to enter the precincts of the temple when employed in serving process, or in the execution of any other duty entrusted to them, as officers of police.

R. IV, 1806, § XXI.
R. V, 1806, § IV.
Collector of the tax on pilgrims, at Juggurnauth, declared assistant to the magistrate of Cuttack, and authorized to act accordingly.

R. XIII, 1791, extended to Benares by R. XII, 1795, re-enacted for ceded provinces by R. XII, 1803, § XIII.
Neglect, or misconduct of assistants to magistrates to be reported to the Nizamut Adawlut.
R. IX, 1791, § LXIII, re-enacted for ceded provinces by R. VII, 1803, § XXV.
R. II, 1801, § XIV.
C. P. R. VIII, 1803, § XXIV.
Cons. of cir-

If any assistant to a magistrate be guilty of neglect, or misconduct, in the discharge of his duty (other than corruption or extortion for which a distinct mode of proceeding is established) the magistrate is enjoined to report the same to the court of Nizamut Adawlut. In like manner the courts of circuit are directed to report to the Nizamut Adawlut every instance in which it shall appear to them that the magistrates have been guilty of neglect or misconduct in the discharge of their duty, as well as whenever the magistrates may omit or refuse to obey their orders. In the first part of this Analysis,* it was stated that the ministerial officers of the civil and

criminal courts (including the registers and assistants) had been declared amenable to the courts, to which they are respectively attached, for acts of corruption or extortion. The mode of proceeding to be observed by the provincial courts, on charges of corruption against the judges of the zillah or city courts,* and by the Sudder Dewanny Adawlut on a charge of corruption against any provincial, zillah, or city judge, was also specified.† But by Sections II and III, of Regulation X, 1806, since enacted, the former provisions, relative to such charges, have been rescinded; and the following rules have been established by the subsequent sections of that regulation; extending to the Judicial Department such parts of Regulation VIII, 1806,‡ as are applicable to charges, or information, against the European public officers employed in that department.

Court of circuit to report neglect or misconduct of magistrates before stated relative to charges of corruption or extortion. Against ministerial officers of civil and criminal courts.

Rescinded by R. X, 1806, § II, III.

"WHENEVER a charge of corruption, embezzlement, or other high misdemeanor, as described in Section IV, Regu-

R. X, 1806, § IV.

* Page 122.

† Page 133.

‡ The title of this regulation is "to amend the existing rules for receiving complaints in the city, and zillah civil courts, against collectors of the land revenue and customs, commercial residents, and other European public officers, declared amenable to those courts, for acts done in their official capacity, in opposition to any published regulation; and to make further provision for a special enquiry, in certain cases of charge, or information, against any such officers." The grounds of this regulation are very fully stated in the preamble to it. One object of it was, to distinguish more certainly public suits against government for authorized acts, in the performance of which the collectors and other public officers are not personally responsible; from personal actions against the officers of government, for unauthorized acts, which render them answerable individually. But the principal object is that, "when an accusation is preferred to any of the courts of judicature, authorized to receive the same, or information is given to the Governor General in Council, of corruption, embezzlement, or other gross malversation, breach of trust, or high misdemeanor, by a public officer, an immediate inquiry should be instituted, for the purpose of ascertaining whether such accusation, or information be founded, or otherwise; in order that, in the former case, government may be enabled to judge, whether such officer deserve to be any longer continued in the employment of the Company; and that, in cases which may appear to require it, the provisions of the law may be carried into effect by a public prosecution in the Supreme Court of Judicature; or if the charge shall appear to be unfounded, that justice may be done to the character of the accused."

Charges of corruption, embezzlement or other high misdemeanor, against public officers in the judicial department, to be transmitted, in the first instance, to Governor General in Council.

lation VIII, 1806, against the register, or assistant to the register, of any zillah or city court, or against an assistant to the magistrate of any zillah or city, may be preferred to the judge of such zillah or city, or to the provincial court of the division in which such zillah or city may be situated; or to the court of Sudder Dewanny Adawlut; and whenever any such charge against the judge or assistant judge, or the magistrate of a zillah or city, or against the register, or assistant to the register, of any provincial court of appeal and circuit, may be preferred to the provincial court, having authority over the judge, magistrate, or other officer so accused; or to the court of Sudder Dewanny Adawlut; and whenever any such charge against the judge of a provincial court of appeal and circuit, or against the register, deputy register, or any assistant to the register, of the courts of Sudder Dewanny Adawlut and Nizamut Adawlut, may be preferred to the court of Sudder Dewanny Adawlut; the judge or judges of the court receiving any such charge, shall immediately transmit the same (with an English translation, if preferred in any of the country languages) for the information and orders of the Governor General in Council."

Section V.
Where proceedings will be held by Governor General in Council on receipt of such charge, or its omission.

"ON the receipt of any charge transmitted to the Governor General in Council under the preceding section, as well as in all cases when a charge, of public information, of the nature therein described, against any covenanted servant of the company employed in the judicial department, may be communicated directly to the Governor General in Council; he will call for any explanation, or cause any general previous inquiry to be made, which he may deem proper, on consideration of the nature and circumstances of the case. If on receipt of such information it shall appear to the Governor General in Council to be necessary and proper, either from the importance or nature of the charge, to cause a further inquiry to be made, he will refer the charge for investigation to any of the established courts of judicature, or to a special commission consisting of

one or more of the judges of those courts, or any other person or persons whom he may judge it expedient to appoint for the purpose."

" WHEN a charge, received under this regulation, may be referred for inquiry to any special commission, not being one of the established courts of judicature, the commissioner, or commissioners, previously to entering upon the performance of the duty committed to him or them, shall take and subscribe before such person or court, as the Governor General in Council direct to administer it, the oath prescribed in Section VI, Regulation VIII, 1806."

Section VI.
Oath to be taken by special commissioners appointed to investigate such charges.

" THE provisions contained in Sections VII, VIII, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX, of Regulation VIII, 1806, shall also be applied to the investigation of any charges referred for inquiry by the Governor General in Council, under the present regulation."

Section VII.
What provisions of Regulation VIII, 1806, applicable to inquiry in such charges.

" WHENEVER a charge may be referred for investigation, after the general previous enquiry mentioned in Section V, of this Regulation, either to any of the established courts of judicature, or to a special commission, the officer accused shall be suspended from the discharge of the functions of his station, and he shall, at the same time, be suspended from the receipt of the salary and allowances attached to such station. But if the charge be found, on enquiry, to have no foundation, the Governor General in Council, on restoring the suspended officer to the exercise of the functions of his station, will order payment of the whole of his salary and allowances, from the date of his suspension, in the manner as if it had never taken place."

Section VIII.
In what cases the officer accused is to be suspended from his station, and from receipt of allowances attached thereto.

But suspended allowances to be paid if the charge have no foundation.

" WHEN a charge may be referred for inquiry under this regulation, the Governor General in Council will determine, whether

Section IX.
By whom the prosecution of charges referred

For inquiry under this regulation is to be demanded.

Whether the conduct of the prosecution shall be left to the accuser; or be undertaken on the part of government. In the latter case, the Governor General in Council will appoint a committee, consisting of such of the public officers at the presidency, as he may judge proper, to digest and prepare the charge or charges, from the papers received, and any further information obtainable from the accuser, or from any other source; and to bring the evidence in support of the accusation in due order before the court or commission. The Governor General in Council will at the same time nominate either the register of the provincial, zillah, or city court, where the enquiry is to be made, or such other person as may be deemed proper, to conduct the proceedings on the part of the prosecution, under the orders of the said committee, with the aid of the vakeel of government. The person or persons, by whom the charge or information shall have been exhibited, may also be examined upon oath, on the part of the prosecution."

Section X.
Security for prosecution of charges not to be demanded in the first instance. But may be required, if necessary, at any time in the course of the inquiry.

This provision extended to charges against officers in revenue and commercial departments, referred for inquiry under Regulation VIII, 1806.

And to charges of corruption and extortion against judges, magistrates, and native ministerial officers, under R. XII, and XIII, 1793, and C. P. R. XI, and XII, 1803.

"SECURITY shall not be demanded in the first instance for the prosecution of any charge received under this regulation. But in the event of its appearing necessary, at any time in the course of the inquiry, sufficient hazitzaminy security may be required from the accuser, to attend and prosecute the charge to a conclusion. This provision shall also be considered applicable to charges against the public officers of the revenue and commercial departments referred for special inquiry under Regulation VIII, 1806; as well as to charges of corruption and extortion against the Hindoo and Mahomedan law officers, and the native ministerial officers, of the civil and criminal courts, in qualification of the rules contained in Regulations XII and XIII, 1793, and Regulations XI and XII, 1803, whereby security is required for the prosecution of a charge of corruption or extortion against any such officers, previously to the charge being received."

THERE are fix courts of circuit, each consisting of the three judges who compose the provincial court of appeal, and of the cauzy and moofly attached to that court. The registers and assistants to the provincial courts are likewise registers and assistants to the court of circuit. And the same native officers are attached to both courts. A distinct form of oath is prescribed to be taken by the judges, registers, assistants and law officers of the courts of circuit; and the latter are required to take a retrospective oath, every six months, viz. on the 1st January and 1st July, of each year, for the reasons before stated, with respect to a similar requisition from Mahomedan pleaders.* The pundit of the Benares provincial court has also been specially attached to the court of circuit of that division, for the purpose of expounding the Shaster in cases of dhurna and other matters connected with the Hindoo law. The following zillah and city jurisdictions are included in the division of each court of circuit; and numbered in the order, wherein the jail deliveries are directed to be held by the rules now in force; excepting the four cities of Dacca, Moorshedabad, Patna and Benares, and zillah Barrilly, of which the jail-delivery is held monthly; and the zillah of the 24-Pergunnahs, contiguous to the station of the Calcutta court of circuit, the jail-delivery of which is held quarterly; † by one of the judges at the sudder station.

R. IX, 1793, § XXXI, to XXXIX.
R. R. XVI, 1795, § V, to XII.
C. P. R. VII, 1803, § II, to X.
Number and constitution of the courts of circuit.

R. XI, 1795, § III.

CALCUTTA DIVISION.

1. Burdwan. 2. Jungle Mehals. 3. Midnapore. 4. Cuttack.
5. Jessore. 6. Nuddea. 7. Hooghly. 8. Foreign Settlements of Chinsurah, Chandernagore and Serampore. 9. 24-Pergunnahs.

R. I, 1806, § IV.
Calcutta division

* Page 148.

† The jail-delivery of zillah Dacca Jessore was also held quarterly, in pursuance of Section IV, Regulation II, 1804, whilst the magistrate of that zillah resided at Dacca. But the station having been recently ordered to be removed from that city, the jail-deliveries will hereafter be held half-yearly as provided by Section III, Regulation VII, 1797.

DACCA DIVISION.

R. III, 1798,
§ VI.
Dacca division.

1. Mymensing. 2. Sylhet. 3. Tipperah. 4. Chittagong. 5. Backergunge. 6. Dacca Jelalpore. 7. City of Dacca.

MOORSHEDEBAD DIVISION.

R. I, 1806, §
IV.
Moorsshedabad
division.

1. Bhagulpore. 2. Purnea. 3. Dinagepore. 4. Rungpore. 5. Rajeshahy. 6. Beerbhoom. 7. City of Moorsshedabad.

PATNA DIVISION.

R. II, 1804, §
VIII,
Patna division.

1. Ramghur. 2. Behar. 3. Tirhoot. 4. Sarun. 5. Shahabad. 6. City of Patna.

BENARES DIVISION.

R. I, 1806, §
V.
Benares division.

1. Mirzapore. 2. Allahabad. 3. Bundelcund. 4. Juanpore. 5. Goruckpore. 6. City of Benares.

BAREILLY DIVISION.

R. I, 1806, §
V.
Bareilly division.

1. Cawnpore. 2. Furruckabad. 3. Etawah. 4. Agra. 5. Allyghur. 6. South Saharunpore. 7. North Saharunpore. 8. Moradabad. 9. Bareilly.

R. II, 1799.
Preamble.
Reasons for a
monthly jail-
delivery in the
cities of Dacca,
Moorsshedabad,
Patna, &c. &c.
Benares, and in the
town and zillah
of Bareilly.
Also for a quar-
terly jail-deliv-
ery in the 24
Pargannas.

C. P. W. VIII,
1804, § XIV.

R. II, 1804, §
IV.

THE jail-deliveries of the four principal cities were ordered to be held monthly, partly in consideration of the convenience of the prosecutors and witnesses, who in the cities are frequently foreign merchants; or other strangers, who could not wait the period of a half yearly session without injury to their private concerns. The facility arising from one or more of the judges of circuit being always upon the spot, and the propriety of all persons, charged with criminal offences, being brought to trial as soon as circumstances admit, must also have influenced the adoption of this measure; and an extension of it to the town and zillah of Bareilly, at which place the judges of circuit for that division reside, as well as the rule for a quarterly jail delivery in the months of March, June, September and December, for

the 24 Pargunnahs, the place of residence of the judges of the Calcutta Court of Circuit. The jail deliveries of the other zillahs are held half yearly; and the following periods are fixed for the commencement of each circuit, with reference to the state of the country, and the convenience of travelling, at different seasons of the year. In the Dacca, Benares and Bareilly divisions on the 1st January and 1st July. In the Calcutta division on the 1st April and 1st October. In the Moorshedabad division, on the 1st March and 1st September. In the Patna division, on the 1st June and 1st December. These periods, and the fixed order of succession in holding the jail deliveries, (which was established to obviate the hardship sustained by particular prisoners; when the jail deliveries were held at unequal periods, and without any certain order of succession) are not to be deviated from by the courts of circuit, without the sanction of the Nizamut Adawlut; unless the periods fixed for commencing the circuit happen to fall within the Duffrah, or Mohurruun, vacation, * in which case the commencement of the circuit is to be postponed until the expiration of the vacation; or as long as the magistrate of the zillah, where the first jail delivery is to be held, may, on a reference from the court of circuit, state to be necessary on this account. By Section XLI, Regulation IX, 1793, the judges of circuit, in each division, were ordered to form two courts, to proceed upon the circuits; one consisting of the first judge, accompanied by the register and moofy; the other of the second and third judges, attended by the senior assistant and cauzy. The provincial court being consequently shut during the absence of the judges, and much inconvenience to the parties in civil causes arising therefrom, it was provided by Regulation VII, 1794, that two of the judges should hold the two courts of circuit, whilst the third should remain, in rotation, at the sudder station, to carry on the current business of the civil court. Two judges however being requisite to form a court for the

Jail-deliveries
of the other
zillahs to be
held half-year-
ly, and at
what period.
R. IX, 1793, §
X.
B. R. XVI,
1797, § XII.
C. R. VII,
1803, § XI.
R. II, 1797,
§ III.
R. I, 1804, §
III.
Act preamble,
C. P. R. VII,
1803, § XI.

R. III, 1798.
Preamble.
And Sections
IV, VI.
C. P. R. VIII,
1803, § XIV.
R. I, 1806, §
VI.
Fixed periods
and succession
of jail deliv-
eries not to be
deviated from,
without sanction
of the Nizamut
Adawlut.
Provision,
when the pe-
riod for com-
mencing the
circuit may fall
within either
of the annual
vacations.

P. IX, 1793, §
XLI.
Original rule
for constituting
two courts to
proceed upon
the circuit.

R. VII, 1794,
§ II, III, IV.
Subsequent
rule, by which
one judge was
left at the sud-
der station.

Preamble to

Regulation III
1797.
Necessity of
further provisi-
on, for enabling
two judges to
sit in the court
of appeal.

R. III, 1797,
§ II.
C. P. R. VII,
1803, § XII.
Rule for second
and third judges
to proceed al-
ternately on the
circuit. And
for the constant
residence of the
senior judge at
the sudder sta-
tion.

trial of appeals, and the period during which that number could sit together, whilst two of the three judges were obliged to go upon the circuit half-yearly, being found insufficient for the decision of the appeals preferred; it was necessary to make further provision for this purpose. It was therefore enacted by Regulation III, 1797, that instead of two judges of circuit holding the jail deliveries of each division at the same time, one judge only should proceed upon the circuit; and it being deemed expedient that the senior judge should always continue at the sudder station, the second and third judges, in rotation, were ordered to hold the half-yearly jail-deliveries, attended by the cauzy and moofy, alternately. This rule is still in force as far as respects the jail-deliveries being held before a single judge of the court of circuit, attended by the cauzy or moofy. But there not appearing to be sufficient reason for continuing the exemption of the senior judges from proceeding upon the circuits, whilst advantage to the public service, as well as convenience to the other judges of the courts of circuit, might be expected from their being occasionally employed on this duty; the following provision has been made by Section VIII, Regulation I, 1806.

R. I. 1806, §
VIII.
Part of above
rule rescinded.
And senior
judges to pro-
ceed on the cir-
cuit, in rotati-
on, unless pre-
vented by ill-
ness, or other
substantial
cause.

“ SUCH parts of Regulation III, 1797, of Regulation VII, 1803, and of any other regulation now in force, as require that the senior judges of the courts of circuit and appeal shall always remain at the sudder station, are hereby rescinded. The senior judge of each division shall in future proceed in rotation on the circuit for the purpose of holding the half-yearly jail-deliveries at the several stations, within the jurisdiction of the court to which he is attached, in common with the other judges of that court, unless he shall be prevented by indisposition or other substantial cause; when the Governor General in Council, on receiving the necessary information on the subject through the Nizamut Adawlut, will order one of the other judges to proceed on the circuit, or will make such other provision for

the discharge of that duty, as may appear to be most expedient. In like manner the monthly jail-deliveries of the cities of Dacca, Moorshedabad, Patna, and Benares, and of the zillah of Bareilly, and the quarterly jail-deliveries of the zillahs of Dacca, Jelalpoore, and the twenty-four Pergunnahs, shall be holden successively by the different judges, including the senior judge, who may be present at the sudder station; unless the judge, whose turn it may be under this rule to hold the session, shall be prevented from the performance of that duty by indisposition or other cause, in which case it shall be competent for the Nizamut Adawlut to order the session to be holden by the other judge who may be present at the sudder station; or, if more than two judges shall be at the sudder station, by whichever of those judges the Nizamut Adawlut may think proper to direct. It is further provided by the regulation above cited, that "it shall be competent to the court of Nizamut Adawlut, on information in any particular instance, that no person has been committed by a zillah or city magistrate for trial before the court of circuit, at the period for holding the jail delivery of such zillah or city, to postpone the session of the court of circuit for such zillah or city, till the period fixed by the regulations for the next ensuing jail delivery. And in like manner, whenever the number of persons committed, or held to bail, for trial before the court of circuit, at any particular station, shall be inconsiderable, and the conclusion of the circuit may be materially expedited by bringing such persons to trial at another contiguous station; or generally, when any special cause shall appear to render it expedient that the persons committed, or held to bail, by any particular magistrate, should be brought to trial at the session of the court of circuit held in the adjacent jurisdiction of another magistrate; it shall be competent to the Nizamut Adawlut, or to the Governor General in Council, to authorize and direct, that the persons committed, or held to bail, in such instances, be brought to trial before the court of circuit at the station which may appear to be most convenient. In such

Also to hold in turn, the monthly and quarterly jail-deliveries.

Provision for indisposition, or other cause of prevention.

In what case the Nizamut Adawlut may postpone the jail-delivery of any zillah or city, or direct it to be held at the station of a contiguous jurisdiction.
R. 1, 1826, § VII.

cases the proceedings of the magistrate by whom the prisoners may have been committed, or held to bail, shall be transmitted with the prisoners to the magistrate of the jurisdiction in which the session of the court of circuit may be held; and the latter magistrate shall perform the duties prescribed by the regulations, in bringing the prisoners, and proceedings, before the court of circuit, as well as in executing any orders of that court which the judge may deem it proper to direct to him, in preference to the magistrate by whom the prisoners shall have been committed, or held to bail.

IN case of the death of the judge, whose turn it may be to proceed upon the circuit; or of his inability to perform the circuit, from sickness, or any other unavoidable impediment; the earliest notice is to be given to the Governor General in Council; who will make such provision for the case as he shall judge advisable. If, at any time, the law officer of the court of circuit be prevented by indisposition, or otherwise, from attending that court, whilst sitting at any zillah or city station, the Mahomedan law officer of the zillah or city court, at such station, is to officiate for him, as long as may be necessary, on such occasions. The whole of the courts of circuit are restricted from sitting upon Sundays on any occasion whatever; and the monthly jail-deliveries of the four cities, and zillah Barcilly, as well as the quarterly jail delivery of the 24 Purgunnahs, are ordered to be held on the days when the court of appeal may not sit; or in such manner as may occasion the least possible impediment to the business of that court.

THE judge of circuit holding the half-yearly jail-deliveries is directed to proceed to the place of residence of the magistrate of each zillah within the division: and, unless it be found indispensably necessary, from the non-attendance of any material evidence, or other sufficient cause, to postpone any trial till a future session, to remain at such station, until all prisoners committed

R. III, 1797, § VI.
C. P. R. VII, 1803, § XIV.
Notice to be given to the Governor General in Council, when the judge, whose turn it may be to proceed upon the circuit, is unable to perform it.
R. IV, 1797, § VIII.
C. P. R. VII, 1803, § XXIV.
Provision for non attendance of the law officer of the court of circuit from sickness or other cause.
R. VII, 1794, § IX, continued by VI, R. II, 1804.
B. R. XVI, 1795, § XIX.
C. P. R. VIII, 1805, § XIV.
The courts of circuit restricted from sitting upon Sundays.
R. II, 1799, § II.
R. II, 1804, § IV, V.
C. P. R. VIII, 1805, § XIV.
As to hold the monthly and quarterly jail-deliveries, on days when the court of appeal does not sit.
R. IX, 1793, § XI.
B. R. XVI, 1795, § XIII.
C. P. R. VII, 1803, § XI.
Judge of circuit holding the half-

committed, or held to bail, by the magistrate, for trial, shall have been tried, and sentence passed upon them, or their trials referred for the sentence of the Nizamut Adawlut.* The proceedings on the trial of prisoners, before the courts of circuit, are ordered to be conducted in the following manner:—"The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty, or, if he plead not guilty, the evidence on the part of the prosecutor, the prisoner's defence, and any evidence which he may have to adduce, being all heard before him, the cauzy or mufty, (who is to be present during the whole of the trial) is to write at the end of the record of the proceedings the futwa (or exposition of the Mahomedan law) applicable to the circumstances of the case, and to attest it with his seal and signature." If the futwa of the law officers acquit the prisoner, and the judge, after attentively considering the evidence and circumstances of the case, concur in such acquittal; or if the futwa declare the prisoner to be convicted of the charge, or of part of it, and the judge, on due consideration, concur in such conviction, and be empowered by the regulations to pass a final sentence on the case, without reference to the Nizamut Adawlut; he is to pass sentence accordingly; and to issue his warrant to the magistrate for the execution of it. If the judge of circuit disapprove the futwa given by his law officer, and have not been expressly authorized by any regulation to pass sentence, notwithstanding such futwa, either for the punishment of the prisoner, or for his acquittal and discharge, with or without security; or if the prisoner be duly convicted, and

yearly in de-
fines, where to
proceed, and
how long to re-
main at each
station
Proceedings on
trials before
courts of cir-
cuit how to be
conducted.
R. IX, 1803, &
XIV.
Extended to
Fetwas by R.
XVI, 1805.
C. P. R. VII,
1803, & XV.

In what cases
the judge of
circuit is to pass
a final sentence,
and issue his
warrant to the
magistrate for
the execution of
it.

R. I III, 1809,
I VI.
In what cases
the proceedings
upon the trial
are to be refer-
red to the Ni-
zamut Adawlut.

* A question having been submitted to the Nizamut Adawlut, whether a prisoner committed by the magistrate, after the arrival of the court of circuit at his station, should be tried at the session of the court of circuit then depending; or at the ensuing session; the court, by a circular letter from their register, dated the 30th November 1796, expressed their opinion that "provided the witnesses are in attendance, and the trial is in every respect ready to be brought before the court of circuit, it should be immediately proceeded upon, in humanity to the prisoner, who must otherwise be kept in confinement till the ensuing jail delivery."

And judge of
circuit when to
pass sentence,
or not, in such
cases.

liable to a sentence of perpetual imprisonment or death; the proceedings upon the trial are to be referred for the sentence of the Nizamut Adawlut. In such cases, viz. in all trials referrible to the Nizamut Adawlut, it is directed that " if the judge of circuit disapprove the futwa given by his law officer; or if the prisoner or prisoners convicted, or any of the prisoners convicted in the same trial, be liable to a sentence of death; the judge shall not pass any sentence (except for the acquittal and discharge of any prisoners not convicted); but shall transmit the trial, with his opinion thereupon, for the sentence of the Nizamut Adawlut. If the judge of circuit concur with his law officer in the conviction of the prisoner, or prisoners, and none of them be liable to a sentence of death, the judge shall pass sentence on the prisoner or prisoners so convicted. But such sentences, in all trials referrible to the Nizamut Adawlut, shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until they be confirmed by the court of Nizamut Adawlut. Moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the Nizamut Adawlut, and an accomplice in the same crime shall have been brought to trial and convicted, at the same time with the principal; the courts of circuit shall not carry into execution their sentence upon the accomplice so convicted; but shall wait the confirmation, or final sentence, of the Nizamut Adawlut, as well respecting the accomplice, as the principal. Provided, however, that this restriction be not understood to prevent the judges of the courts of circuit from passing a final sentence of acquittal upon any prisoners charged as accomplices, whom they may acquit of such charge, in concurrence with their law officers; or from directing the release of any prisoners so acquitted, notwithstanding the reference of the trial of the principal to the court of Nizamut Adawlut." It is further directed that " whenever the judges of circuit may refer to the Nizamut Adawlut the trial of a prisoner or prisoners, whom they may consider pro-

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per objects of capital punishment, under the Second Clause of Section IV, Regulation LIII, 1803, (declaring the penalties of robbery by open violence) or of imprisonment for life under the third clause of that Section; * or of a mitigation of punishment under the fifth clause; or of an extension, mitigation, or remission of punishment in any case whatever; they shall be careful to notice the same in their letters, accompanying the trials referred; and shall state at large the grounds of their judgment whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner, whose punishment is proposed to be extended, mitigated or remitted."

The judges of the courts of circuit are ordered to refer to the Mahomedan law officers of their respective courts all

R. IX, 1803, §
III, 11.
F. d. 11.
Enacts by R.

* The clauses referred to, of Section IV, Regulation LIII, 1803, have been quoted, at length, in pages 388, 389. But since those pages were written and printed, a new regulation has been passed (VIII, 1808,) declaring all persons convicted of robbery by open violence and not liable to a sentence of death, subject to imprisonment and transportation for life. The object of this regulation, as stated in the preamble, is, to prevent persons convicted of robbery, of whose amendment no hope can be entertained from their confirmed habits and principles; from being set at liberty, at the expiration of a limited period, to join their former associates and renew their depredations. By the second section of it the Third Clause of Section IV, Regulation LIII, 1803, is prospectively rescinded. And the following rule is substituted for it by Section III. "All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in Section III, Regulation LIII, 1803, and who may not, under the regulations in force, be liable to a sentence of death, shall be adjudged by the courts of circuit, and by the court of Nizamut Adawlut, to receive thirty-nine lashes with a corah, and to be imprisoned and transported for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe; in which case the court of Nizamut Adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court, by Clause Fifth of Section IV, Regulation LIII, 1803; or to act in pursuance of clause sixth of that section, if the prisoner appear a proper object of mercy and pardon." It is further declared by Section IV, Regulation VIII, 1808, that "persons convicted of going forth with a gang of robbers, for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under Clause Fourth, of Section IV, Regulation LIII, 1803, shall previously to their release from confinement be required to give substantial security for their future good conduct."

XVI, 1795.
Re-enacted for
C. P. by §
XXII, XXIII,
R. VII, 1803.
Courts of cir-
cuit to refer all
questions of law
to their Maha-
medan law of-
ficers; and to
be guided by
their opinions.
Provision in
cases they shall
not concur in
such opinions.

questions on points of law, that may arise in the course of any trial, and respecting which no specific rules may have been enacted by the Governor General in Council. If the opinions delivered by the law officers appear contrary to the principles of justice, or to the provisions of the Mahomedan law, the judges are nevertheless to be guided by them; but after completing the trial, and obtaining the futwa of the law officer present thereupon, are, without passing sentence, to transmit the proceedings and futwa to the Nizamut Adawlut; with a letter, stating their objections, for the consideration and sentence of that court.

R. IX, 1793,
§ XLVIII,
XLIX.
R. I, 1803, §
II, III.
C. P. R. VII,
1803, § XVI,
XVII, and R.
VIII, 1803, §
XXV.
Further rule of
proceeding re-
lative to trials
before the court
of circuit.

THE prosecutor in trials before the court of circuit may be examined under a solemn declaration, if he be of the description of persons exempted from taking an oath; and is allowed the option of carrying on the prosecution in person, or by a vakeel duly appointed, excepting cases in which the Mahomedan law requires the prosecutor's appearance in person at the trial of the prisoner. The judge of circuit may however require the personal attendance of the prosecutor, in all cases wherein his deposition may be deemed necessary, as evidence upon the trial. But no Mahomedan or Hindoo women, of a rank and situation in life, which, according to the custom and prejudices of the country, would render it improper to compel them to appear in a court of justice, are to be made to attend in person. Whenever the prosecutrix, or any witness upon a trial, may be a woman of this description, and her evidence shall be deemed necessary, (the case being such as to admit of its being taken by commission) the judge is to depute persons to take it in the manner prescribed by the Mahomedan law. If the attendance of any witness on the part of the prosecutor or prisoner, whose evidence the law may not allow to be taken by commission, cannot be procured; or if any witness cannot be found, or though attending refuse to give evidence, the judge may postpone the trial un-
til

til the next circuit, if there appear to be sufficient cause for so doing. If the attendance, or evidence, of such witnesses cannot then be obtained, the judge of circuit may, in like manner, postpone the trial a second time. But if the judge and law officer be of opinion that the evidence of any such witness is not necessary, the trial is to be completed without it. The judges of circuit are expected however, in every instance, to make such inquiry as may be necessary to satisfy themselves, and the court of Nizamut Adawlut in cases referrible to that court, that all due measures have been taken to cause the attendance of the whole of the witnesses, both on the part of the prosecutor and the prisoner. In the examination of witnesses, the courts of circuit are required to observe the rules already stated with respect to witnesses examined by the magistrates. They are further directed to be careful to notice on their proceedings any material differences between the depositions of the same witnesses before them and the magistrates; and are to question the witnesses thereupon and record their answers. But the depositions taken before the magistrates are not to be read before the court of circuit in the presence of the deponents, until they shall have been re-examined before the court of circuit. This court, as before observed, has the same power as the civil courts, of punishing, by fine and imprisonment, any witness duly summoned, who may not attend, or though attending, may refuse to give evidence and sign his deposition. The courts of circuit are further empowered to direct the magistrate to inflict corporal punishment with a rattan, not exceeding fifteen strokes, or imprisonment for any term not longer than fifteen days, * upon any person guilty of contempt of court in open court.

R. IX, 1796, §
IV.
C. P. R. VI,
1803, § XIV.

R. IV, 1797, §
VII.
C. P. R. VII,
1803, § XVIII.

R. L. 1803, §
II.
C. P. R. VIII,
1803, § XXV.
Power vested in
courts of cir-
cuit to punish
witnesses not at-
tending, or re-
fusing to give
evidence.
R. IX, 1793, §
LIX.
Extended to Be-
nares by R.
XVI, 1795.
C. P. R. VII,
1803, §
XXVIII.
Also empower-
ed to order pun-

* The period of imprisonment in the rule for the ceded provinces (Section XXVIII, Regulation VII, 1803,) is four months. But as the remainder of the section is taken *verbatim* from Section LIX, Regulation IX, 1793, which is still in force for Bengal, Behar, Orissa, and Benares, this variation is presumed to have been accidental.

Instrument for
any contempt of
court.
R. X, 1799.
II.
C. P. R. VII,
1801, § XLII.
Rules for gui-
dance of the
courts of cir-
cuit in trans-
mitting their
proceedings up-
on trials refer-
rible to the Ni-
zamut Adaw-
lut.

As soon as possible after the close of any trial referrible to the Nizamut Adawlut, and with no further delay than may be necessary to transcribe the proceedings held thereupon, the courts of circuit are required to transmit to the Nizamut Adawlut a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to such trial; with an English letter, stating their opinion on the evidence, and on the guilt and innocence of the prisoners. The record to be so transmitted is to be authenticated by the signature of the judge and seal of the law officer before whom the trial may have been held, and is to include the whole of the proceedings held before the court of circuit, with every examination, exhibit, or material paper of whatever denomination, taken by, or delivered to that court; and the Persian translations of all examinations taken down in any other language than the Persian. The whole of the proceedings and papers received from the magistrate upon the case referred are also to be annexed to, and transmitted with, the proceedings of the court of circuit; but any variations between the depositions of the witnesses before the magistrates and courts of circuit are to be carefully noticed on the proceedings of the latter, and any confessions of the prisoners before the magistrates, any inquest taken in cases of homicide, or any other evidence appearing on the proceedings of the magistrates, are to be entered, with the necessary proofs, on the proceedings of the court of circuit *. The courts of circuit are further

R. IX, 1798.
LVIII.

* Several instances having occurred of considerable delay in the transmission of trials referrible to the Nizamut Adawlut, that court, with a view to the more certain attainment of the object proposed by Regulation X, 1799, viz. the speedy discharge, or punishment, of the prisoners whose trials are under reference, directed the strict observance of the following instructions, by a circular letter addressed to the courts of circuit, on the 11th September 1801. The zillah and city magistrates were, at the same time, instructed, on the application of the judge of circuit, to afford as far as practicable the assistance of their native officers, in transcribing the proceedings of the court of circuit.

* The counterpart record of proceedings held before the court of circuit, required by Section

ther directed, in the transmission of trials to the Nizamut Adawlut to give a preference, as far as practicable, to those trials in which the prisoner, or prisoners, may be liable to a sentence of death. And the proceedings in such cases are to be transmitted within ten days after the trial is completed. They are also directed, in the transmission of their proceedings to the Nizamut Adawlut, to be guided by such forms and instructions as they may receive from that court. Previous to the commencement of each circuit, the courts of circuit are to examine the lists of trials held on the preceding circuit, and referred to the Nizamut Adawlut, and in the event of their not having received the sentence or orders of the Nizamut Adawlut, are to report the same to that court; that in the event of the proceedings transmitted, or of the sentence or orders passed thereupon, having miscarried, duplicates may be sent, without delay. On their return from each circuit, the judges are to transmit to the Nizamut Adaw-

R. IV, 1797, §
XIII.
C. P. R. VII,
18, 3, 5
XXVII.

R. IV, 1797, §
XIV.
C. P. R. VII,
18, 3, 5
XXVIII.

R. XXXVI,
1797, § VI.

Report to be
made to the
Nizamut Adawlut
of the trials
held on the
preceding circuit,
and of the
sentences or
orders passed
thereupon, in
the event of
their not having
received the
sentence or
orders of the
Nizamut Adawlut,
are to report the
same to that
court.

R. IV, 1797, §
XIV.
C. P. R. VII,
18, 3, 5
XXVII.

Section II, Regulation X, 1790, to be transmitted as soon as possible after the close of the trial referable to the Nizamut Adawlut, and with no further delay than may be necessary to transcribe the proceedings held thereupon, is to be invariably transmitted to the station where the trial may have been held, before the judge of circuit proceeds to any other station, unless from the number of referable trials his detention, whilst the record is transcribing, would be such as materially to impede the circuit, in which case he is to report the same to the Nizamut Adawlut, with a list of the referable trials; and information when the same will be transmitted respectively. To enable the judges of circuit to prepare the counterpart record of trials referable to the Nizamut Adawlut, with the least possible delay, the several zillah and city magistrates will be instructed to give the assistance of their native officers in transcribing the original proceedings; and the judges of circuit are authorized to employ any additional mohorirs they may find necessary, and be able to procure, for the same purpose, transmitting a contingent bill on this account for the sanction of government. The proceedings and papers received from the magistrates, required by the regulation abovementioned to be transmitted to the Nizamut Adawlut, with trials referable to that court, are to be transmitted as received from the magistrates; without making copies of them; and such papers, after the Nizamut Adawlut shall have passed sentence on the trial referred with them, will be returned to the judge of circuit. By these means, the court trust, that the trials referable to them will be always transmitted, in future, within the period of ten days, fixed by Section LXVIII, Regulation IX, 1793, as well as without any impediment to the business of the circuit. If any other measures should appear to you advisable for either of these purposes, the court desire you will communicate them."

Report to be made to the Nizamut Adawlut, at the close of each circuit.

but a report, containing such observations as they have made during the circuit, regarding the effect of the present system for administering the criminal laws, in the prevention and punishment of crimes; as well as respecting the state of the jails; the treatment and employment of the prisoners; and such other matters as they shall think deserving the notice of the court. But any new regulations which the judges of circuit may deem advisable, are to be prepared in the manner and form prescribed by Regulations XX, 1793, and IX, 1803.* With a view to the regular information of the Nizamut Adawlut upon the progress made in the half yearly circuits, the judges were further required by a circular order from the Nizamut Adawlut, dated the 8th October 1806, "to report to that court the dates on which they may commence and conclude the business at each station."

R. IX, 1793, § LXII.
B. R. XVI, 1795, § XXIV.
C. P. R. VII, 1803, § XXXII.

Judges of circuit to visit the jails at each station, and issue such orders as may appear advisable.

R. IX, 1793, § LX.
C. P. R. VII, 1803, § XXXII.

The judges of circuit are to visit the jails at each station, where the half yearly jail-deliveries are held, and once in every three months, or oftener if they think proper, at the stations where monthly or quarterly jail deliveries are held; and are to issue to the magistrates such orders as may appear advisable for the better treatment and accommodation of the prisoners. The report to be made by them to the Nizamut Adawlut in cases of neglect of duty, disobedience of or-

* See page 22 of the first part of this Analysis. Since that part was printed, the following rule, (contained in Section XXXI, Regulation VIII, 1805, for the ceded and conquered provinces, and extended to the other provinces by Section XII, Regulation XI, 1806,) has been passed for promulgating the regulations in the country languages. "On receipt of translations of the regulations in the country languages, the zillah and city judges and magistrates shall cause the same to be publicly read in their cutcherries; and shall require the native pleaders of their respective courts to take copies of the translations of any regulations which relate, directly or indirectly, to the administration of civil justice. The judges shall also cause the copies, which they are required to furnish to the cauzees stationed in the several towns and pargunnahs within their respective jurisdictions, to be read and published, for general information, at the cutcherries of the native commissioners, empowered to act as magistrates, and of the police darogahs, or tehsildars in charge of the police."

ders, or misconduct on the part of the magistrates, has been already noticed. By Section XVII, Regulation IX, 1793; (re-enacted for the ceded provinces by Section XVII, Regulation VI, 1803,) the courts of circuit were further required to report to the Nizamut Adawlut any instances wherein, upon the examination of the proceedings held by the magistrate, any persons should appear to have been released or punished by him on insufficient grounds. In explanation of this rule, it was declared by Section V, Regulation IX, 1801; (re-enacted for the ceded provinces in the Fifth Clause of Section II, Regulation III, 1804,) that the judges of circuit are expected to examine with attention the proceedings of the magistrate in any case wherein a petition of complaint may be preferred to them at the jail delivery, next ensuing after the magistrate's decision upon the case; and to make the report directed by the above section to the court of Nizamut Adawlut, if the circumstances of the case shall appear to require it; or, if otherwise, to inform the party complaining by a written order, upon his petition.* But, to save the necessity of frequent references to the Nizamut Adawlut in such cases, the judge of circuit is

Report to be made to the Nizamut Adawlut, as already noticed, in cases of neglect of duty, disobedience of orders, or other misconduct.

R. IX, 1793, § XVII.
C. P. R. VI, 1803, § XVII.

Further rule, when persons sentenced by the magistrate may appear to have been discharged or punished, on insufficient grounds.

R. IX, 1801, § II.
C. P. R. III, 1804, § II, C. 5.

Explanation of the above rule.

R. IX, 1807, § XXII.
Modified.

* Section XVII, Regulation IX, 1793, having been construed to mean that the judge of circuit is to examine and carry away the whole of the proceedings of the magistrates, in cases determined by them, and submitted to the judge of circuit, the Nizamut Adawlut informed the courts of circuit by a circular letter dated the 22d May 1804, that "it is not meant by the above section (explained by Section V, Regulation IX, 1801,) that the judge on circuit should examine and carry away the whole of the proceedings of the magistrates; but that an examination of them is only requisite in cases wherein applications may be made to the judge on circuit, or wherein it may appear to him necessary for any purpose of justice. In such cases the court are of opinion that the judge ought to inspect the proceedings and pass such orders as appear proper, or make the prescribed reference, at the station where the application may be made, provided it can be done without materially protracting the business of the circuit. But when the requisite examination of the proceedings of the magistrates in these cases would be productive of considerable detention of the circuit judge, the court are of opinion that there would be no objection to his taking the proceedings with him to the next station on the circuit; or to his keeping them for examination until his return to the sadder station; instructing the party, applying for such examination, by a written order on his petition, to attend him accordingly, for the purpose of receiving a copy of any orders which may be passed by him."

authorized

And judges of circuit authorized to direct a further inquiry when requisite; and report to judges of the court of circuit collectively, instead of Nizamut Adawlut.

R. IX, 1807,
§ XXIII.

General authority of two or more judges of a court of circuit, to call for and control proceedings of a zillah or city magistrate, or his assistant.

R. IX, 1793,
§ LXIV.
C. P. R. XV,
1803, § II.
Provisions for differences of opinion, when two or more judges of the court of circuit are present.

R. LIII, 1803,
§ XI.
Authority vested in the judge of circuit to order, in certain cases, the release, on mo-chulka, of persons confined for security by order of the courts of circuit and Nizamut Adawlut.

Report to be made by the

authorized by Section XXII, Regulation IX, 1807, in modification of the former rule above cited, whenever any case determined by a magistrate or his assistant, "may appear not to have been sufficiently investigated; and a further inquiry may be practicable, and requisite for the ends of justice; to direct such additional inquiry to be made by the magistrate, and the result to be communicated to the judges of the court of circuit, collectively, for their orders on the case; instead of reporting it in the first instance to the court of Nizamut Adawlut." By Section XXIII, of the same regulation, "two or more judges of a court of circuit, forming a court at the sudder station, are declared competent on all occasions, when it may appear necessary, upon petitions presented to them, relative to the proceedings of any zillah or city magistrate, or of an assistant to a magistrate, within their jurisdiction, to call upon the magistrate for his proceedings, or those of his assistant, on the case; and to pass such orders thereupon as they may deem proper and consistent with the regulations." If a difference of opinion shall arise on any question, when the three judges of the court of circuit are present, the opinion of the majority is to be adopted. If two judges only are present, the senior judge has a calling voice. But the judges are required, in such cases, to record the grounds of their respective opinions upon the proceedings.

It remains only to mention, with regard to the judges of circuit, that they are authorized to direct the release (on execution of a mo-chulka or penal engagement) of any prisoner, confined by order of the Nizamut Adawlut, or courts of circuit, under requisition of security for his future good conduct and appearance; if, on the report of the magistrate, upon the prisoner's behavior during his confinement, and on due consideration of all circumstances of the case, the judge of circuit shall concur with the latter in opinion that the prisoner ought to be released. The magistrates are directed to report to the

judges of circuit at each delivery, when any prisoner may have been confined a year or more, from inability to give the security required; and the execution of a mochulka by the prisoner for his future good conduct, without security, may, on consideration of the circumstances of the case, and the prisoner's behavior during his confinement, appear sufficient to provide for the object intended. The judges of circuit, in all instances of such reports from the magistrates, are required to call the prisoner before them, and to examine the proceedings held upon his trial, as far as may be necessary to ascertain the grounds on which the prisoner has been required to find security. It is further prescribed, that both the magistrates and courts of circuit, in the exercise of the discretion thus vested in them, give due consideration to the nature of the crime, of which the prisoner may have been convicted, or suspected; his general character, as far as ascertainable; and the consequent risk to be apprehended from his being released, without security for his future good conduct. It has likewise been declared by Section IX, Regulation VII, 1808,* that "in all instances, wherein persons are required to give security under Clause Sixth of Section II, Regulation

magistrate in such cases.

magistrate in such cases.

magistrate in such cases.

magistrate in such cases.

magistrate in such cases.

* This provision was, in part, anticipated by the following resolution of the Zamut Adawlut, passed on the 8th August 1807, and communicated to the courts of circuit for their guidance. "The court, remarking, that several judges of circuit have it as a rule to provide, in their orders for requiring security, a limited period of imprisonment in the event of the prisoner's being unable to give the required security, and it appearing to the court that notorious decoits, or persons of dangerous character, against whom there may be sufficient evidence to warrant an order for not releasing them without substantial security for good behaviour, should not be released until such security be given, however long they may remain in custody, unless the magistrate and court of circuit should see reason to permit their discharge on mochulka under Section II, Regulation LIII, 1803; the court desire that the judges of circuit will in future distinguish, in their orders for security, the cases of persons ordered to be so detained on account of strong suspicion of gang robbery or robbery as decoits, from the cases of persons of less dangerous character. The first case to be for detention indefinitely until security be given (subject to the provisions of Section II, Regulation LIII, 1803); and orders for a limited period of imprisonment, in commutation of the requisition of security, to be restricted to cases of the latter description."

of persons of
dangerous cha-
racters, without
security.

LIII, 1803; or any other provision in the regulations, may be notorious robbers (decoits) whom it would be dangerous to set at liberty without substantial security for their future good conduct; the prisoner shall not be released until such security be given, to the satisfaction of the court of circuit, upon the report of the magistrate; unless from the prisoner's behavior during his confinement, or other circumstance, there appear to be sufficient ground of assurance to warrant his discharge on a mochuika; under the provision made for that purpose by Section XI, Regulation LIII, 1803. *

R. IX, 1793, &
LXVI, LXVII.

Court of Nizamut Adawlut
where held and
how constituted.

THE COURT of Nizamut Adawlut, or superior criminal court, is held at Calcutta; and was constituted, by Section LXVII, Regulation IX, 1793, to consist of the Governor General and Members of the Supreme Council, assisted by the head cauzy and two mooftees. But for the reasons before stated, relative to an alteration in the constitution of the Sudder Dewanny

* In concluding what relates to the powers and duties of the courts of circuit, it appears unnecessary to offer any remark upon their utility and importance; both as providing for the regular and impartial administration of criminal justice, by experienced judges, who can have no bias against the prisoners brought to their tribunal; and as superintending and controlling the conduct of the local magistrates within their respective divisions. But it may be proper to insert in this place the following circular letter to the magistrates, from the Secretary to Government in the Judicial Department, dated the 11th April 1805; and to notice that accommodation for the judges of circuit has since been provided at many of the zillah stations.

"It having been represented to His Excellency the Most Noble the Governor General in Council, that the judges of circuit have, in some instances, been exposed to inconvenience, from want of personal accommodation, during their residence at the different stations for the jail-delivery; and His Excellency in Council being of opinion, on a consideration of the nature of the duties of the judges of circuit, that the necessary accommodations should be provided for them during the sittings; I am directed to desire that you will report whether there are any public buildings which can be appropriated to the above-mentioned purpose, and if not, that you will state in what manner you would recommend that the necessary accommodation should be provided for the judges of circuit, with the least expense which may be practicable to Government. I am further directed to acquaint you that the Governor General in Council desires that every personal attention, and respect, may be shewn to the judges of circuit, by yourself and the officers subject to your authority, during their residence at your stations, and on their progress through your jurisdiction."

A. Adawlut.

Adawlut, * it was enacted by Section X, Regulation II, 1801, that " the court of Nizamut Adawlut shall henceforth consist of three judges, to be denominated respectively, chief judge, and second and third judge; of the Nizamut Adawlut, assisted by the head cauzy of Bengal, Behar, Orissa, and Benares, and by two mooftees. The said chief judge shall not be the Governor General, nor the Commander in Chief, but shall be one of the Members of the Supreme Council, to be selected and appointed by the Governor General in Council; and the said second and third judges shall be selected and appointed by the Governor General in Council, from among the covenant civil servants of the Company, not being Members of the Supreme Council." The various important duties of the members of the supreme government rendering it impracticable for any member of the government to perform effectively the duties of chief judge of the courts of Sudder Dewanny and Nizamut Adawlut, and the entire separation of the judicial authority from the legislative and executive authorities, appearing to be essential for the purpose of giving full effect to the provisions made for ensuring to the people the permanent enjoyment of the inestimable blessing of just laws duly administered," such part of Regulation II, 1801, as directed that the chief judge of the Sudder Dewanny and Nizamut Adawlut should be a member of the supreme council, were rescinded by Section II, Regulation X, 1805; which provided that "the chief judge of the said courts shall be selected by the Governor General in Council from among the civil covenanted servants of the Company not being members of the supreme council."† This provision however has been since rescinded by Section II, Regulation XV, 1807; and it is directed by Section III of that regulation, that " the court of Sudder Dewanny Adawlut and

R. II, 1801, §
X.
C. P. R. VIII,
1809, § 117.

R. X, 1805, §
II.

R. XV, 1807, §
II.

* Page 130.

† This regulation was before referred to in a note subscribed to page 146, and the necessity of three efficient judges, who could apply the whole of their time to the daily sittings of the Sudder Dewanny Adawlut and Nizamut Adawlut, was pointed out, from the extended jurisdiction of the courts over the ceded and conquered provinces.

Nizamut

Nizamut Adawlut shall in future consist of a chief judge, being a member of the supreme council, but not the Governor General, nor the Commander in Chief; and of three puisne judges, to be selected from among the Company's covenanted servants." *

R. II, 1801, § XI.
C. P. R. VIII, 1803, § IV.

Oath to be taken by the judges of the Nizamut Adawlut.

R. IX, 1793, § LXX, LXXI.
C. P. R. VIII, 1803, § VII, VIII.

And by the Register and law officers.

R. II, 1801, § XIII.
C. P. R. VIII, 1803, § V.

The Nizamut Adawlut to be an open court, and by what rules of proceeding to be guided.

THE chief judge, and each of the puisne judges of the Nizamut Adawlut, are required to take and subscribe before the Governor General in Council an oath, similar to that which is directed to be taken by the judges of the courts of circuit. The register and law officers of the Nizamut Adawlut are also required to take and subscribe the same oaths as are directed to be taken by the registers and law officers of the courts of circuit. It is prescribed by Section XIII, Regulation II, 1801 (re-enacted for the ceded provinces by Section V, Regulation VIII, 1803,) that the Nizamut Adawlut be an open court; and that it be held, under the same provisions as are prescribed for the court of Sudder Dewanny Adawlut, with respect to the number of judges necessary for holding a court; to an eventual difference of opinion between the judges; to

* The grounds of this regulation are not detailed in the preamble; which merely states that it has been deemed advisable to modify the provision contained in Regulation X, 1805. It is understood however to be founded upon an order of the Honorable Court of Directors, which, on a principle of economy, and a supposition that one of the members of the supreme council might be able to officiate as chief judge of the Sudder Dewanny Adawlut and Nizamut Adawlut, directed a re-establishment of those courts as constituted by Section X, Regulation II, 1801. As however the member of the Government who held the nominal office of chief judge under that regulation (Sir George Barlow) was never able, from his constant duties in the executive government, to take sufficient time to sit in court; and the increased business of those courts requires the attendance and time and attention of three judges; it was impracticable to discontinue the appointment of a third judge, exclusive of the nominal chief judge, who, under the regulation of 1805, was now a member of the supreme council. Upon the policy of this arrangement, (which is in substance similar to the high authority upon which it is founded, it is not to be formed, whether any essential benefit can be derived from an arrangement so laborious, partial, and inefficient.) And, if not, whether a complete separation of the judicial authority from the legislative and executive government, would not be more consistent with the principles of wisdom and experience upon which all the British courts of judicature are established.

the ordinary and special sittings of the court; to its mode and order of proceeding; and to the execution of its process.* But in consequence of the number of trials made referrible to the Nizamut Adawlut, by Regulation VIII, 1808, (under the provisions of which all persons convicted of robbery by open violence, who may not be liable to suffer death, are subject to imprisonment and transportation for life) the following modifications of the rules before in force have been enacted by that regulation.

Modifications
of former rules
enacted by R.
VIII, 1808.

“ Such part of the existing regulations as directs that two judges of the court of Nizamut Adawlut shall be necessary to hold a court, and that no sentence or final order of the court shall be valid unless passed by two judges present, is hereby rescinded.”

Section V.
Restriction, that
two judges be
necessary to
hold a court, re-
scinded.

“ The sittings of the court of Nizamut Adawlut shall be held before two or more judges, as heretofore, whenever the number of trials and other business depending before the court may admit of it. But whenever the number of depending trials may render it necessary, for their speedy determination, that the judges should hold separate sittings, it shall be competent to any one judge to hold a sitting of the court, and to pass orders or sentence upon any trial under reference to it, in conformity with the regulations; provided, that if the single judge so sitting shall not concur with the judge of circuit, before whom the trial may have been held, with respect to the conviction of the prisoner, he shall not pass sentence, until one or more of the other judges of the court of Nizamut Adawlut can sit with him upon the trial.”

Section VI.
In what cases
one judge of
the Nizamut
Adawlut may
hold a sitting of
the court.

And what pow-
ers may be ex-
ercised by the
judge so sitting.

“ The Mahomedan law officers of the court of Nizamut Adawlut shall continue to deliver their joint futwa upon the trials referred to that court, as far as may be practicable.

Section VII.
In what cases,
and under what
restrictions, a
single law officer
of the N -

But whenever, from the number of trials in reference, it may be requisite for their speedy decision, that they should be divided amongst the law officers for revision, it shall be competent to any one of the law officers to deliver a futwa thereupon. Provided that if any one of the law officers of the Nizamut Adawlut, on revising the proceedings held upon the trial, shall not concur with the law officer of the court of circuit before whom the trial may have been held, as to the conviction of the prisoner, he shall not write the futwa, until one or more of the other law officers of the Nizamut Adawlut can deliver the same in concert with him, after perusal of the proceedings."

R. IX, 1793, §
LXXII.

Nizamut Adaw-
lut has cogni-
tance of all mat-
ters relating to
criminal justice,
and police.

R. IX, 1793, §
LXXIII.

May exercise
powers vested
in late Naib Na-
zim.

R. II, 1801, §
XII.

Under restric-
tions in the re-
gulations.

R. IX, 1793, §
LXXIV.

G. F. R. VIII,
1803, § IX.

By what law
the sentences of
the court to be
regulated.

The court of Nizamut Adawlut is authorized to take cognizance of all matters relating to the administration of justice, in criminal cases, and to the police of the country;* and is directed to submit to the Governor General in Council such regulations regarding them as it may deem advisable. It may exercise the general powers which were vested in the Nizamut court when held at Moorshedabad, and superintended by the late Naib Nazim the Nuwab Mohummud Ruza Khan. But its authority in particular cases is defined by the regulations; and it is prescribed that the sentence of the court be regulated by the Mahomedan law, excepting cases in which a deviation from it may be expressly directed by any regulation, passed by the Governor General in Council. The modifications of the Mohomedan law enacted by the regulations have been stated

* A more direct superintendence of the police is exercised by the Governor General in Council, with whom the magistrates correspond, on breaches of the peace, and other subjects of police, through the secretary to government in the judicial department. In a letter from that officer to the register of the Nizamut Adawlut, dated 14th May 1807, the power reserved to the executive government was declared in the following terms: "The Governor General in Council considers it essential that the powers exercised by the executive government in the conservation of the general peace of the country, should be kept entirely distinct from the powers and duties vested in the Nizamut Adawlut, as a court of criminal judicature; and that the government should receive direct and immediate information of any occurrences requiring its aid and interposition."

in the preceding section. The cases referrible to the Nizamut Adawlut by the magistrates, and courts of circuit, have also been noticed; and it will be sufficient to add that in cases of life and death, as well as in all cases of corporal punishment, fine, and imprisonment, the sentences of the Nizamut Adawlut, are final. A power of remission, or mitigation of punishment, is however reserved to the Governor General in Council. In all instances wherein the futwa of the law officers of the Nizamut Adawlut shall declare the prisoner or prisoners liable to more severe punishment, than, under the evidence and all the circumstances of the case, shall appear to that court to be just and equitable; and the Mahomedan law shall not allow a discretion to the court in determining the degree of punishment, (as it does in all cases of tazeer, or chastisement); the court of Nizamut Adawlut are to pass sentence according to the existing regulations; but are authorized to suspend the execution thereof, and to submit the case to the Governor General in Council, with a recommendation, either to mitigate the punishment, or to pardon the prisoner, according to the evidence and the circumstances of the case.

And in what cases such sentences are final.

Power of remitting or mitigating the legal punishment reserved to Governor General in Council.

R. VI, 1796, § II.
C. P. R. VIII, 1803, § XIX.
Rule for cases in which the law officers of the Nizamut Adawlut shall declare a prisoner liable to more severe punishment than may appear to the court just and equitable.

THE law officers of the Nizamut Adawlut are ordered to assemble at the office of the register three times in every week, or oftener if necessary. The register is to lay before them the Persian copies of proceedings upon trials referred by the courts of circuit to the Nizamut Adawlut; after duly considering which, and previously to leaving the register's office, they are to state in writing, at the foot of the record upon each trial, whether the futwa of the law officer of the court of circuit is consistent with the evidence, and conformable to the Mahomedan law, or the futwa which, in their opinion, ought to be delivered upon the case; and are to subscribe

R. IX, 1793, § IXXVII.
C. P. R. VIII, 1803, § XII.
Rule for obtaining futwas of the law officers of the Nizamut Adawlut and general mode of proceeding to be observed upon trial, referred to that court.

* Under the former regulations, the law officers of the Nizamut Adawlut, it has been their invariable practice, to deliver a general futwa upon the case, without any direct reference to the law officers of the courts of circuit; though any erroneous reasoning, or conclusion, in the latter, is sometimes indirectly noticed and refuted.

their

their names, and affix their seals thereto. The register is to submit the proceedings so revised to the judges of the Nizamut Adawlut at their next meeting; and the court, after perusing the proceedings of the court of circuit, with the futwas of the law officers of that court, and of the Nizamut Adawlut, are to pass the final sentence; unless further evidence or information upon any point appear requisite; in which case the necessary instructions are issued to the courts of circuit, or magistrates; and the sentence is postponed till a communication shall have been made of the result; when, if further evidence be received, a second futwa is taken from the law officers, and the trial is again brought before the court.

R. LIII, 1803,
§ VII, C. 5.
In what cases
the Nizamut
Adawlut may
confirm the sen-
tence passed by
the judge of
circuit, with ut
revising the pro-
ceedings held
upon the trial.

WITH a view to expedite the decision upon trials referred to the Nizamut Adawlut, as far as the ends of justice would permit, it was declared by the fifth clause of Section VII, Regulation LIII, 1803, that " in cases not incurring capital punishment, where a prisoner may have been convicted by the futwa of the law officer to the court of circuit; and the judge of circuit, before whom the trial has been held, shall concur in such conviction; and consider the prisoner a proper object of the punishment to which he is liable under the Mahomedan law, or the regulations; and shall pass sentence upon him accordingly, (as required in such cases by clause second, of Section VI, of this regulation); and the law officers of the Nizamut Adawlut, on consideration of the proceedings held upon the trial, shall also confirm the conviction of the prisoner; and the sentence passed upon him by the judge of circuit shall appear to the Nizamut Adawlut to be conformable to the regulations; it shall be competent to the judges of the Nizamut Adawlut to confirm the sentence so passed upon the prisoner by the court of circuit, and confirmed by the futwa of their law officers, and found conformable to the regulations, without a revision of the proceedings held upon the trial, except in cases in which for any special reason, or purpose of justice, they may appear to require it. Provided,

Provided, that in all cases wherein the prisoner or prisoners, or any prisoner included in a trial referred to the Nizamut Adawlut, may be liable to capital punishment; as well as in all other cases wherein the judge of circuit, before whom the trial is held, may not concur in the conviction of the prisoner, declared by the futwa of his law officer; or may not consider the prisoner, though convicted, a proper object of the punishment to which he is liable by the Mahomedan law and regulations; or in which the law officers of the Nizamut Adawlut may not confirm the conviction of the prisoner, declared by the law officer of the court of circuit; or in which the sentence passed by the court of circuit may not appear conformable to the regulations; or in which any special reason, or purpose of justice, may appear to require a revision of the trial; the judges of the Nizamut Adawlut shall revise and consider the whole of the proceedings held upon the trial; or, in cases not capital, so much thereof, as may be requisite to enable them to form a full judgment on the case in reference to them; and shall pass sentence accordingly." By Section VIII, Regulation VIII, 1808, the above rule is continued in force under the present constitution of the Nizamut Adawlut, as modified by the provisions of that regulation. And it is further declared, that if the judge of circuit, before whom the trial has been held, be of opinion that the prisoner is duly convicted, and the futwa of his law officer, as well as the futwa of the law officer or officers of the Nizamut Adawlut, confirm such conviction, it shall be competent to two or more judges of the court of Nizamut Adawlut, on consideration of such part of the proceedings held upon the trial, as they may deem it necessary to revise, to confirm the sentence passed by the court of circuit, in conformity with the regulations; although the judge of circuit may recommend a mitigation of the prescribed punishment; if, on consideration of the reasons stated by the judge of circuit, the court of Nizamut Adawlut shall be of opinion that there are not sufficient grounds for the proposed mitigation; or to mitigate the sentence,

Provision for cases in which the Nizamut Adawlut are to revise the proceedings, in whole, or in part.

R. VIII, 1808, & VIII.

The former rule continued under the constitution of the Nizamut Adawlut. And two judges empowered to confirm sentence of the court of circuit, in certain cases, altho' the judge of circuit may recommend a mitigation of punishment.

Or to mitigate the sentence as recommended by the judge of circuit.

tence, as recommended by the judges of circuit, if from his statement of the case there appear to be sufficient grounds for so doing."

R. IX, 1793, §
LXXVIII.
C. P. R. VIII,
1803, § XIII.
Sentences, of the
Nizamut Adawlut how to
be executed.

WITHIN three days after sentence is passed by the court of Nizamut Adawlut, or sooner if practicable, the register is to transmit a copy of it, under the seal of the court, and attested with his official signature, to the judges of the court of circuit, who are immediately to issue a warrant to the proper magistrate, to cause the sentence to be carried into execution.* The magistrate, on receipt of the warrant, is to cause the sentence to be executed, without delay; and to return the warrant to the court of circuit, with an endorsement under his official seal and signature, certifying the manner in which the sentence has been executed.† All warrants so returned are

* For the fuller information of the magistrates, the courts of circuit were instructed by the Nizamut Adawlut, on the 13th March 1804, in all cases of capital punishment, to transmit to the magistrate, with their warrant, a copy of the sentence passed by the Nizamut Adawlut.

† Printed forms of warrants, in the English and country languages; are furnished to the magistrates by the register to the Nizamut Adawlut, and the following instructions were circulated to the magistrates, through the courts of circuit, on the 19th June 1804. "It is the intention of the Nizamut Adawlut, that all warrants should be returned to the court by which they are issued, after the complete execution of the sentence contained in them, with an endorsement, certifying the manner in which the sentence has been carried into execution. In the case of a sentence both for corporal punishment and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the magistrate should retain the warrant until the expiration of the term of imprisonment, or return it only endorsed should the prisoner die during the course of the term, or, in the event of his being returned to his native country, the warrant should be transmitted to the magistrate of the district, whom the prisoner may be sent to, with information that he is to return it to the court of circuit, in the case of his death, or the expiration of the sentence, or death of the prisoner. The following orders, certifying the restoration of stolen property, were transmitted to the courts of circuit on the 5th May 1798. "The court of Nizamut Adawlut, in its orders, frequently directs that the sentence of the restoration of stolen property found on the prisoner convicted, and being of opinion that the execution of such orders should be cer-

are to remain with the court of circuit; excepting warrants for the infliction of capital punishment, which are to be forwarded to the Nizamut Adawlut. *

THE powers vested in the court of Sadder Dewanny Adaw-

R. II, 301, 5
XIV.

tified by the zillah and city magistrates, either in the return endorsed by them on the warrant of the court of circuit, or in a subsequent return to be made as soon as the execution of the order may admit; you are accordingly directed to require the magistrates of your division to certify to you, in the manner above stated, the execution of all orders of the foregoing description, and are to be careful that such certificates are preserved among the records of your court."

* In the execution of sentences of the courts of circuit and Nizamut Adawlut for corporal punishment, by stripes; a thick whip, of one thong, made of corah hide or leather, and thence called a corah, is used. And the following instructions were issued to the magistrates through the courts of circuit on the 21st and 28th December 1796. "The court of Nizamut Adawlut taking into consideration the objections which have arisen to the instruments of punishment introduced since the discontinuance of the corah in November 1794, and to the use of the military cat as has been proposed; and from all the information which they have been able to obtain on the subject, having no reason to believe that the corah, which has long been the established instrument of corporal punishment in this country, has in any instance proved fatal, or is likely to be productive of fatal consequence if used with proper precautions, they have directed me to desire that you will instruct the several magistrates within your division to use the corah, which was formerly the established instrument of punishment, in the execution of sentences for corporal punishment, passed by the court of Nizamut Adawlut, or by your court, under the following precaution:

1st. The whipping post to be so constructed as that the prisoner, when tied to it, may be secured from receiving any part of the blow on his breast or other forepart of his body.

2^d. The corah-buridar to be positively enjoined to strike the prisoner on the back only; with every possible attention to prevent the blow's falling on any other part of the body.

3^d. All prisoners to be examined by the surgeon of the station (or in his absence by the native doctor) previously to their being punished; and the punishment to be postponed of any prisoner whom the surgeon (or native doctor) may consider in too infirm a state to receive it, as long as he may judge necessary.

4th. The native doctors, attached to the jails of the several stations, to be present on all occasions when prisoners are punished with the corah; and the punishment to be stopped at any stage of it, if the native doctor should be of opinion, that the infliction of the remaining stripes will endanger the prisoner's life; in which case the remainder of the punishment is to be postponed until the surgeon of the station consider the prisoner capable of sustaining it. On the 25th October 1797, the magistrates were further directed to use a jacket, introduced by the third judge of the Dacca court of circuit (Mr. CRISP), made of strong hide, to protect and fitted as to cover and defend from injury the whole of the fore-part of the body, and the neck and loins behind; leaving exposed only that part of the back and shoulders on which the stripes ought to fall.

lut,

C. P. R. VIII,
 s. 80, § XXIV.
 Powers vested
 in court of Ni-
 zamut Adawlut
 in cases of dis-
 obedience, or
 neglect, or false
 return to any
 process, rule,
 or order by a
 court of circuit,
 or magistrate.

How to proceed
 on reports of
 neglect or mis-
 conduct by a
 zillah or city
 magistrate, or
 by a register or
 assistant to a
 court of circuit
 or magistrate.

General rule,
 when a covenan-
 ted servant may
 appear guilty of
 neglect of duty
 or other mis-
 conduct not pre-
 vided for by
 the regulations.

lut, to suspend from office, any judge or judges of the provincial, zillah, or city courts, for disobedience or neglect of any process, rule, or order, of the court of Sudder Dewanny Adawlut, or for a false return thereto; and to suspend any judge of a zillah or city court, in cases of disobedience, neglect or false return to any process, rule, or order, of a provincial court of appeal, are declared to be equally vested in the court of Nizamut Adawlut, in similar cases of disobedience, neglect or false return, to any process, rule, or order, of that court, by the judges of the courts of circuit, or the zillah or city magistrates; as well as in cases of disobedience, neglect, or false return, by a zillah or city magistrate, to any process, rule, or order, of a court of circuit; and in such cases, the courts of circuit are directed to make the same reports to the court of Nizamut Adawlut, as the provincial courts of appeal are required to make to the Sudder Dewanny Adawlut. The court of Nizamut Adawlut is further authorized and directed to proceed upon reports from the courts of circuit, of neglect or misconduct, by the zillah or city magistrates, as well as upon reports from the court of circuit, and zillah or city magistrates, of neglect, or misconduct, by their registers, assistants, or other ministerial officers, in the same manner as the court of Sudder Dewanny Adawlut is authorized and directed to proceed upon similar reports to that court, of neglect, or misconduct, on the part of the judges of the zillah and city courts; or of the registers, assistants, and other ministerial officers of those courts; or of the provincial courts of appeal; and in all cases, wherein a covenanted servant of the Company, employed in any of the criminal courts, or in any office of police, may appear to the Nizamut Adawlut to have been guilty of neglect of duty, or of other misconduct, not expressly provided for by the regulations, that court is either to report the same to the Governor General in Council, or to advise and admonish the party, as the case may require.

THE court of Nizamut Adawlut is empowered to authorize occasional deviations from the order of succession, fixed for the half-yearly jail deliveries, upon report of any particular circumstances that may occur to render such deviations necessary. It is also competent, with the sanction of the Governor General in Council, to authorize any special deviation, which may appear necessary or expedient, from the rules prescribed for the periods of the several jail deliveries. It is further declared competent to call for the proceedings of any court of circuit, or of any zillah or city magistrate, or assistant to a magistrate, whenever it may appear requisite; and to pass such orders thereupon as it may deem just and proper.

R. III, 1798, § VI.
R. II, 1804, § VIII.
C. P. R. I, 1801, § VI.
Further powers vested in Nizamut Adawlut for occasional deviations from the fixed order and periods of the zillah and city jail deliveries.

R. IX, 1807, XXIV.
And general power of calling for and controlling the proceedings of any court of circuit, magistrate, or assistant

The court of Nizamut Adawlut is directed to keep a regular copy of its proceedings. But since the alteration made in the constitution of the court by Regulation II, 1801, an English translation and record are not required, except as the court may find convenient and conducive to regularity; and as may be necessary in the prescribed cases of reference to the Governor General in Council; when attested copies of the court's proceedings, and translations of any papers in the country languages, are to be furnished.*

R. IX, 1793, § LXVIII.
C. P. R. VIII, 1803, § VI.
Diary of proceedings to be kept by Nizamut Adawlut.
R. II, 1801, § XVI.
How far an English record, and translation of papers in the country languages, are required.

In addition to the general rules, and ordinary courts of criminal jurisdiction, which have been mentioned, the following special provisions have been enacted for the trial of persons charged with crimes against the state, who may not be brought to trial before a court martial, in pursuance of Regulation X, 1804, already cited. "In all cases, in which a person subject to the ordinary jurisdiction of the courts of circuit shall be charged with treason, rebellion, or other crime against the

Special rules for the trial of persons charged with crimes against the state, who may not be tried by a court martial.

R. IV, 1799, II.
Re-enacted for ceded provinces by R. XX, 1803.

* This has been already noticed, with the proceedings of the court of Sudder Dewanny Adawlut; as well as the intention of preparing an annual report of the trials upon which sentence is passed by the court of Nizamut Adawlut, for the information of government and of the Hon'ble Court of Directors. These reports have been transmitted for the year 1805, and are prepared for the years 1806 and 1807.

Before what
court persons
charged with
such crimes
may be brought
to trial.

state, the Governor General in Council, or the executive Government at Fort William for the time being, shall be competent to order the person or persons, so charged, to be brought to immediate trial before all the judges of the court of circuit, to which such person or persons may be amenable; or before any other special court, which it may be judged expedient to appoint for this purpose, consisting of three judges, and two Mahomedan law officers; or such other number of judges and law officers, as may be thought proper."

Section III.
Courts appointed
to try such
persons how to
proceed.

"THE courts convened under the preceding section, whether composed of the judges of the courts of circuit, or otherwise, are to try the prisoners brought before them in the same manner as they would have been tried before the ordinary courts; and shall exercise all the powers and authorities vested in the courts of circuit by the regulations; except that their sentence, whether of acquittal or punishment, shall in every instance be reported with their proceedings to the court of Nizamut Adawlut, previous to carrying the same into execution, and they are to be guided as to the place where they are to assemble, the persons to be tried by them, and all other particulars not provided for in the regulations, by the special orders which they may receive from the executive government, or from the court of Nizamut Adawlut."

Section IV.
Provision for
death, or ab-
sence, of any of
the judges or
law officers of
the courts so
appointed.

"IN case of the death, or of the absence, from indisposition or other cause, of any of the judges, or law officers, of the courts which may be appointed to try offenders under this regulation, the remaining judge or judges, or law officer or officers, shall be competent to form a court, and proceed with the trial or trials, until provision can be made by the Governor General in Council, or by the executive government for the time being, for supplying the place of such judge or judges, or law officer or officers, if any such provision shall be deemed necessary; or, if no such provision be made, the powers

powers and proceedings of the said courts shall not be affected by the death or absence of such judge or judges, or law officer or officers, any more than if the same had never taken place."

“ THE Nizamut Adawlut on the receipt of any trials referred to them under this regulation, are to proceed thereupon according to the rules in force with respect to other trials referred to them; except that they are in every instance to report their sentences, with the whole of the proceedings held upon the case, to the Governor General in Council, or to the Executive Government for the time being; and are to wait the orders of government before they direct their sentence to be carried into execution.”

Section V.
Nizam-ul-Ahwal
but how to pro-
ceed upon this
referred to
them in such
cases.

“ THE magistrates of the several zillahs and cities are enjoined to give their utmost assistance, as far as may depend on them, in expediting the trial of all persons charged with the crimes mentioned in this regulation; and in the event of any person, or persons, being charged with such crimes before them in the first instance, they are to give immediate notice thereof to the Governor General in Council, for his orders. The magistrates are also required to pay immediate and strict attention to all orders which may be transmitted to them by the executive government, for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trial before the ordinary courts of circuit, or before the special courts described in this regulation.”

§ 6 of VI
Inspection of
magistrates with
respect to pri-
sons charged
with crimes a-
gainst the State.

SPECIAL rules have also been enacted for the trial of crimes and misdemeanors, charged against the mountaineers, who inhabit the hills of Rajemahl and Boglepore. And as the reasons of policy and justice, upon which these rules were founded, are fully stated in the preamble to Regulation I, 1796, it

Special rules for the trial of crime and int. delinquency charged against the inhabitants of the Republic and Bojonegara hills.
R. 1, 1700.

Preamble.
Stating grounds
of this regula-
tion.

is here inserted at length, with the provisions referred to.

" THE hills situated to the South and West of Rajemahl, and in other parts of the zillah of Boglepore, are inhabited by a distinct and uncivilized race of people, differing entirely in manners, customs, and religion, from the inhabitants of the circumjacent country, and who, as far as can be traced, never acknowledged the authority of the native Government. Being destitute of manufactures, and but little acquainted with agriculture, they subsisted principally by plunder; and their incursions into the low country, which were attended with every species of cruelty, had almost desolated the districts to which they were extended. These people were at length induced by the late Mr. AUGUSTUS CLEVELAND, the collector of the zillah, to relinquish their predatory habits, and to submit to the authority of the British administration. Amongst the measures which he adopted with the sanction of Government, for establishing good order throughout the hills, certain pecuniary allowances were granted to the chiefs of the several hills, on condition of their preserving the peace of their respective jurisdictions; and with a view to conciliate the inhabitants, as well as in consideration of their uncivilized state, and entire ignorance of the language, laws, and customs of the Mahomedans and Hindoos, it was determined on the 14th June 1782, that the inhabitants of the hills should not be subject to the jurisdiction of the ordinary tribunals of the country; but that all crimes and misdemeanors committed by them should be tried by an assembly of their chiefs, to be held at the town of Boglepore, or Rajemahl, or elsewhere in the district, under the superintendence of the magistrate; who was ordered, in particular cases, to report the sentences passed by the assembly for the revision of the Governor General and Council. This mode of trial having been found to be highly satisfactory to the hill people, and having answered the purposes of justice, the Governor General in Council has resolved to continue it; but

deeming

deeming it consistent with the principles of the regulations, for the administration of justice, that the revision of the sentences passed by the assembly of hill chiefs, should be transferred from the Governor General in Council, to the Nizamut Adawlut, under special rules; he has passed this regulation, which is to be considered in force from the date of its promulgation."

" THE hill people in the districts of Rajemahl and Boglepore shall not be tried for crimes or misdemeanors by the Mahomedan law, nor by the rules and regulations at present in force, or which may be hereafter enacted, for the trial of other individuals subject to the jurisdiction of the ordinary criminal tribunals of the country."

Section II.
Hill people in
Rajemahl and
Boglepore to be
excepted from the
general rules of
criminal justice.

" ALL hill people who may be accused of crimes or misdemeanors, shall, on their apprehension, be brought before the magistrate of Boglepore, who shall cause the complaint, if not preferred to him in writing, to be committed to writing, and attested by the complainant with his signature or mark; and if it shall appear to him on examination of the complainant, or any person, or persons, said to be acquainted with the circumstances of the case, on oath, to be administered and taken according to their religious persuasion, or custom, that the crime, or misdemeanor, of which the prisoner may be accused, was never committed, or that there is no ground to suspect him of having been concerned in the commission of it, the magistrate shall cause the prisoner to be forthwith discharged, recording his reasons for so doing."

Section III.
Magistrate how
to proceed on
criminal charges
against them.

" If it shall appear to the magistrate, that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner of having been concerned in the commission of it, the magistrate shall cause him to be committed to prison or held to bail, as may appear to him proper, to

Section IV.
C. 1.
In what cases
to be committed,
or held to bail,
for trial before an
assembly of hill
chiefs.

take his trial before an assembly of hill chiefs, naibs, and man-
joys, to be convened for that purpose by the magistrate; who
is required to adopt such measures as may appear to him ne-
cessary to ensure the attendance of the prosecutor, and the
witnesses on the part of the prosecution, and the prisoner,
when the trial shall come on."

Section IV.

C. 2.

Prisoner to be
questioned if
he wishes to
have any wit-
nesses examined
before the hill
assembly, and
his answer re-
corded on the
magistrate's
proceedings.

"In all cases of a prisoner being committed or held to bail
for trial before a hill assembly, the magistrate, immediately
after passing the order of commitment, shall question the
prisoner as to whether he wishes to have any witness or wit-
nesses examined in his defence before the assembly, and in the
event of the prisoner answering in the affirmative, shall cause
a list of the witnesses named by him, specifying their designa-
tions and places of abode, to be taken down and recorded on
his proceedings; or in the event of the prisoner's replying
in the negative, shall cause such answer to be recorded on
his proceedings for the information of the assembly, and even-
tually of the Nizamut Adawlut."

Section IV.

C. 3.

Any other wit-
nesses named by
the prisoner
previously to the
sitting of the
assembly, to be
signified by
the magistrate.

"An observance of the foregoing rule will leave all priso-
ners, committed or held to bail for trial before the assembly,
without any just ground of complaint that they have not been
allowed to bring witnesses in support of their innocence; but
as it may happen from want of recollection or other cause,
a prisoner, at the time of his commitment may omit to name a
witness whose evidence he may afterwards be desirous to
adduce upon his trial, the magistrate shall observe it as a
rule, in the event of any prisoner, who may be committed
or held to bail to take his trial before the assembly, desiring,
previous to the commencement of the sitting of the assembly,
the examination of any witness or witnesses upon his trial,
although the same may not have been named by him at the
time of his being committed, or held to bail, he is to be care-
ful to cause the attendance of such witness or witnesses, as

well as of those before named, at the time fixed for the trial of the party who may desire their examination."

"THE magistrate is to furnish the assembly, together with his proceedings on each trial referred to them, with lists of the witnesses who may have been summoned at the requisition of the prosecutor or the prisoner, specifying those who are in attendance, and such as are absent; with the cause of the non-attendance of the latter. To furnish the assembly with the fullest, and most accurate information on the non-attendance of any absent witness, the above lists shall be accompanied with the original returns made to the magistrate by the nazir, and person deputed on his part, to serve the summons on any witness, who may not be in attendance; and the nazir and the person so deputed on his part shall be kept in attendance on the assembly, to answer any interrogatories which the members thereof may judge it necessary to put to them. By this means, the assembly will be enabled to ascertain the real causes of the non-attendance of the witnesses, by their own inquiry; and it is expected they will in every instance make such inquiry, as far as may be necessary to satisfy themselves, and the court of Nizamut Adawlut, in cases referrible to that court, as hereafter directed, that all due measures have been taken to cause the attendance of all the witnesses, both on the part of the prosecutor and the prisoner."

Section IV
Lists of witnesses and returns to serve of summonses upon such as are absent, to be laid before assembly.

Nazir and person deputed to serve the summons to be kept in attendance

Inquiry to be made by assembly respecting absent witnesses.

"THE magistrate is empowered to hear all petty complaints that may be brought before him, and to decide thereon whenever he can adjust them to the satisfaction of both parties; but in cases in which this cannot be effected, and the party accused shall appear to him deserving of punishment, he is invariably to commit, or hold to bail the prisoner, to take his trial before the ensuing assembly."

Section V.
Magistrate to hear petty complaints. And adjust them to satisfaction of the parties.

"WHENEVER

Section VI.
Litigious and
groundless com-
plaints how
punishable by
the magistrate.

" WHEREVER the complaints specified in the preceding sec-
tion shall appear to the magistrate to be nugatory, vexatious,
or groundless, he is authorized to punish the complainant by
confinement for fifteen days, or by corporal punishment, not
exceeding fifteen strokes of a rattan."

Section VII.
Assembly to
be convened
twice in every
year; or as of-
ten as necessary.

" AN assembly of all chiefs, naibs, and manjeys, shall be
convened by the magistrate twice in every year, or as often
as may be necessary, for the trial of hill people charged with
crimes or misdemeanors, under the rules and customs preva-
lent among them."

Section VIII.
Oath to be ad-
ministered to
hill chiefs,
naibs, and man-
jeys.

" THE magistrate is enjoined to cause to be administered to
the chiefs, naibs, and manjeys, who are entitled to sit in judg-
ment, and to pass sentence on the prisoners brought before
them, previously to their entering upon the duties for which
they are convened, the oath which may be considered by them
most solemn and binding. It not having been customary how-
ever to administer an oath to the inferior manjeys, who have
only a deliberate voice, they are not to be sworn."

Section IX.
Assembly,
where to be
held; and
when adjourn-
ed.

" THE magistrate is empowered to cause the assembly to be
held in any part of the zillah of Boglepore, which he may
consider most convenient, and to adjourn the assembly as soon
as the business for which it may have been convened shall be
completed."

Section X.
Magistrate to be
present at all
assemblies. And
may suggest
questions to
assist, on
the prisoners.

" THE assemblies are to be held in the presence of the ma-
gistrate, who is to preside, and to whom all questions are to be
put by the parties. He is to regulate the proceedings as he
may think proper, and to see that the business is conducted in
the circumstances of justice and equity. He is to receive from
the Nizamut Adawlat all cases which are to be finally decided by
the court, and to submit them to the assembly. He shall also cause the as-
sembly to observe in their proceedings as much regularity as
the circumstances may require."

Also to cause
attendance of

circumstance

circumstances will admit; and he is authorized to allow such examinations as may have been taken before him, in the first instance, and shall have been fully and freely admitted by prisoners on their trial, to form a part of the proceedings. But he shall not exercise any interference whatever, nor suffer his officers, or any person, not being a member of the court, to interfere in any respect, with the deliberations or sentences of the court."

regularly and examinations before him to form part of the proceedings.

But not to interfere, or allow any other person to interfere, in deliberation and sentences of the court.

" If sentence of confinement shall be passed on a prisoner for a term not exceeding fourteen years, the magistrate; provided he shall approve of the sentence, is authorized to confirm it, without any reference to the Nizamut Adawlut. The magistrate shall carry such sentences into immediate execution if he shall approve of them; or he shall mitigate the punishment adjudged by them if it shall appear to him too severe. But in every instance this discretion shall be exercised by him, he is required to report the circumstances to the Nizamut Adawlut, and to state his reasons to that court for any alteration he may make in the sentence of the assembly."

Section XI. Magistrate may confirm sentences for confinement, not exceeding 14 years.

And cause such sentences to be executed, or mitigated; reporting any mitigation to the Nizamut Adawlut.

" SHOULD the sentence adjudge the offender or offenders to suffer death, or mutilation, or imprisonment for a term exceeding fourteen years, the magistrate is to transmit the original proceedings held on the trial to the Nizamut Adawlut, with his opinion on each case."

Section XII. In what cases the proceedings to be referred, with the magistrate's opinion, to the Nizamut Adawlut.

" THE court of Nizamut Adawlut shall revise the proceedings on the trials transmitted to them under the preceding section, and shall confirm or alter the sentences, or pass such sentence as they may judge equitable, under the rules and restrictions contained in the following clauses."

Section XIII. C. 1. Proceedings to be revised, and sentences passed, by the Nizamut Adawlut.

" It shall not be competent to the Nizamut Adawlut to pass sentence

§ XIII. C. 2. Restrictions in

passing sentence
of capital pu-
nishment.

sentence of capital punishment on any prisoner who may not have been adjudged to suffer death by the assembly."

§ XIII, C. 3.
Mutilation
commutable to
imprisonment.

" ALL sentences of mutilation, provided the court shall be satisfied of the prisoner's guilt, shall be committed to imprisonment for fourteen years, if the prisoner shall have been sentenced to lose two limbs; and for seven years, if he shall have been sentenced to lose one limb. If the court, on consideration of the case, shall not consider the prisoner deserving of so long a period of imprisonment as is above prescribed, they shall restrict it to such shorter period as they may think proper."

§ XIII, C. 4.
Option of next
of kin to pardon,
or receive
a pecuniary
compensation,
in case of murder,
not to be
admitted.

" A CUSTOM having obtained amongst the hill people, in certain cases of murder, of leaving the option to the next of kin to the deceased, either to pardon the murderer, or to demand retaliation, or a pecuniary compensation, the operation of this custom shall not be admitted. But in all cases in which a prisoner shall be pronounced by the assembly guilty of murder, and the case shall be such, that the prisoner would be liable to suffer death, supposing the option abovementioned were to be continued, and the heir or heirs should demand retaliation, the prisoner shall be sentenced to undergo capital punishment, and shall suffer death accordingly."

§ XIII, C. 5.
Nizamut Adawlut
may recommend
to Governor General
in Council, a
remission, or
mitigation, of
punishment, if
it shall be
a proper object
of mercy.

" IN all cases in which a prisoner shall be sentenced to suffer death by the assembly of hill chiefs, and the Nizamut Adawlut shall deem him a proper object for mercy, the court shall submit the case to the Governor General in Council, and recommend a pardon, or such commutation of the sentence, as may appear to them proper, on a consideration of the circumstances of the case."

Section XIV.
Records of
trials referable to
Nizamut Adawlut

" THE magistrate, within ten days after the adjournment of every hill court, or as much earlier as circumstances may admit

admit, shall transmit to the Nizamut Adawlut, a Persian record (to be obtained through the medium of the bandwaries or interpreters) of all trials that are referred to them, with a separate letter containing his remarks on each particular case."

but, to be transmitted with magistrate's remarks on each case, within ten days after the pronouncement of every hill court.

"THE register to the Nizamut Adawlut, within six days after every final sentence shall be passed, shall transmit a copy of it, under the seal of that court, and attested with his official signature, to the magistrate of Boglepore; who shall cause the same to be executed without delay, reporting to the Nizamut Adawlut the manner in which the sentence has been enforced."

Section XV.
Register of Nizamut Adawlut to communicate sentence of that court, within six days; for execution by magistrate.

"THE magistrate shall include the names of the hill prisoners in the 1st, 3d, 4th, 5th and 6th reports, which he is required to keep, and transmit monthly to the Nizamut Adawlut, by Section XXX, Regulation IX, 1793, according to their respective descriptions; and to consider them when apprehended, and after sentence, in every other respect in the same situation as the rest of the prisoners under his charge.

Section XVI.
In what reports hill prisoners to be included.

"IN cases coming under the cognizance of the magistrate of Boglepore, in any respect connected with the trial of hill prisoners, for which no specific rule is prescribed in these regulations, he is to act according to justice, equity, and good conscience; bearing in mind, that he is to shew every indulgence and attention to the prejudices and customs of the hill people, consistently with the principles of justice."

Section XVII.
Magistrate how to act in cases for which no specific rule is prescribed.

REGULATION XIV, 1805, "for extending the jurisdiction of the court of circuit for the division of Calcutta, and of the Nizamut Adawlut over the settlements of Chandernagore and Chinsurah, in certain cases, and for, defining the powers and duties

R. XVI, 1805, Regulation for the temporary administration of criminal justice in the French settlement of Chandernagore, and

Dutch settle-
ments of Chin-
surah.

Also in the Dutch
settlement
of Serampore.

duties of the superintendent of Chandernagore, and commissioner of Chinsurah, in his capacity of magistrate for these settlements," has been already adverted to in the preceding section.* The Regulation recently enacted, to provide for the administration of civil and criminal justice in the settlement of Serampore, in consequence of its capture by the British arms, has also been referred to in a note to the present section. As both these regulations are temporary, intended to have operation only whilst the Foreign settlements specified shall remain subject to the British Government, it does not appear necessary to detail the whole of the provisions contained in them. It will be sufficient to transcribe the following sections of the two regulations in question, which shew the tribunals established for the trial of persons charged with criminal offences, in each settlement, and the powers vested in them respectively.

R. XVI, 1806,
§ II.

Jurisdiction of
Calcutta court
of circuit and
Nizamut Adaw-
lut extended to
Chandernagore
and Chinsurah.

"THE jurisdiction of the court of circuit for the division of Calcutta, and of the court of Nizamut Adawlut established at Calcutta, shall, under the provisions contained in this regulation, extend over the settlements of Chandernagore and Chinsurah; including all places within the limits of those settlements, as possessed by the French and Dutch governments in the years 1793 and 1795."

Section III.

C. II.

By what regula-
tions the court
of circuit and
Nizamut Adaw-
lut to be guided.

"In all matters cognizable by the court of circuit and the court of Nizamut Adawlut, under this regulation, those courts shall be guided in their proceedings and decisions by the regulations which have been enacted, or which may be hereafter enacted, in conformity with the rules prescribed in Regulation XLI, 1793, for the administration of criminal justice, in the Provinces of Bengal, Behar, and Orissa."

" It is at the same time hereby provided, that no part of the existing regulations, whereby the punishment of any offence is enhanced beyond the punishment of such offence prescribed by the Mahomedan law, shall be considered applicable to any crime, committed within the settlement of Chandernagore or Chinsurah, as described in the preceding section, before the promulgation of this regulation."

Section III.
C. 3.
Proviso, respecting offences committed before the promulgation of this regulation.

" In all such cases, viz. whenever the crime charged shall appear to have been committed within the limits described in the preceding section, before the promulgation of this regulation, the court of circuit and Nizamut Adawlut shall be guided by the Mahomedan law, as declared by the futwas of their law officers; and by such modifications of it, in favor of the prisoner, as have been made by any regulation in force; except that the will of the heir of the slain shall not be allowed to operate in cases of murder; but the futwa and sentence in such cases shall be given, without any reference to the heir of the slain, on a supposition that the legal demand for kiffas has been made, as provided by Sections III and IV, Regulation IV, 1797."

Section III.
C. 3.
What law to govern the sentence of the court of circuit and Nizamut Adawlut in such case.

" It is further hereby provided, that if the offender be an European, or the descendant of an European, and be a settled inhabitant of Chandernagore or Chinsurah, and the punishment of the offence under the Mahomedan law, and the provisions of this regulation, would be more severe than the punishment of the same offence under the law in use when the settlement, in which it may be committed, came into the possession of the British government, the punishment to be adjudged against the prisoner shall be regulated by the law which was in use, when the settlement, wherein the offence shall have been committed, came into the possession of the British government."

Section III.
C. 4.
Proviso, if the offender be an European, or descendant of an European, and the punishment, under the Mahomedan law and this regulation, be more severe than the punishment in use when the settlement came into possession of the British government.

" The superintendent and deputy superintendent at Chandernagore, and the commissioner and deputy commissioner at

Section IV.
What complaints may be heard and decided.

terminated, as heretofore, by the magistrate and deputy magistrate.

Limitation of punishment in such cases.

Chinfsurah, in their capacity of magistrate and deputy magistrate, for those settlements respectively, are empowered to hear and determine, as heretofore, without reference to the court of circuit, all complaints and prosecutions for offences, not of a heinous nature; such as abusive language, calumny, inconsiderable assaults, or affrays, petty thefts, and larceny, unaccompanied with open violence, or other aggravating circumstance; and to punish the offender when convicted, according to the rules and practice hitherto observed in the courts of criminal judicature at the above settlements; provided that such punishment shall, in no instance, exceed thirty rattans, in the infliction of corporal punishment; or imprisonment for one year; or a fine to government of two hundred sicca rupees, to be regulated, within such limitation, by the degree of the offence, and the situation and circumstances of the offender; and to be in every instance declared commutable to imprisonment for a definite period, in case the fine should not be paid; or recovered from the property of the offender."

Section V.
In what cases persons accused to be committed, or held to bail, for trial before the court of circuit.

" PERSONS accused of murder, robbery, burglary, arson, counterfeiting of the coin, or any other heinous offence, the prescribed or established punishment of which may exceed the penalties authorized to be inflicted by the magistrate in the preceding section, if, upon the inquiry of the magistrate, or his deputy, there appear to be sufficient grounds for believing the crime charged to have taken place, and the prisoner or prisoners to have been concerned in the perpetration of it, shall be committed to close custody, (or if the offence be of a bailable nature, shall be held to bail,) for trial before the court of circuit, at the next jail-delivery for the settlement in which the crime may have occurred."

Section VI.
What rules to be observed in cases referred to

" THE provisions contained in Sections V, VI, and VII, of Regulation IX, 1798, and in the several sections of Regulation

IX, 1796, shall be considered the general rules for the guidance of the magistrate, and deputy magistrate, of Chander-nagore, and Chinsurah, in the cases referred to in the foregoing section. The court of Nizamut Adawlut may, however, authorize any modifications, which, from local circumstances, shall appear necessary; and are further declared competent to furnish the magistrate of the above settlements with any instructions, not contrary to the general regulations in force, which may appear advisable, for the due execution of any part of his prescribed duties, or those of his deputies, whether relative to criminal justice, or to police."

in preceding
section.

Nizamut Adaw-
lut may autho-
rize any neces-
sary modifica-
tions.

And issue any
instructions to
magistrates,
not contrary to
general regula-
tions.

"Two general jail-deliveries, for the settlements of Chan-der-nagore and Chinsurah, shall be holden annually by one of the judges of the court of circuit for the division of Calcutta, immediately after the half yearly jail-delivery for zillah Hooghly, and at such place as the court of Nizamut Adawlut may direct, for the trial of all persons charged with crimes and misdemeanors, and committed or held to bail, to be tried by the court of circuit, under the provisions contained in this regulation."

Section VII.
Half yearly jail
deliveries for
Chander-nagore
and Chinsurah,
when and where
to be held.

For the administration of civil and criminal justice to the European and native inhabitants of Serampore, there are, as heretofore, two courts; denominated the European court; and the cutcherry or native court. The former is composed of a judge and magistrate, and of a recorder, or register, appointed and removable only by the Governor General in Council. Two officers are also attached to the court, whose duty it is to attest the proceedings of the court; and to verify them, when required, on oath. The native court is superintended by a separate judge and magistrate, appointed by the Governor General in Council, and removable by his order only. The rules prescribed for the determination of civil suits in these courts, subject to an appeal to the commissioner

Civil and criminal
courts esta-
blished at Se-
rampore.

at

at Serampore, in causes exceeding fifty sicca rupees, if tried in the native court, or one hundred and fifty rupees, if tried in the European court; and with liberty of a further appeal to the Sudder Dewanny Adawlut, if the amount or value adjudged, against the party desiring to appeal, exceed five thousand sicca rupees; cannot, with propriety, be stated in this place. But the following sections of the regulation referred to, * comprise the rules enacted for the criminal jurisdiction of the magistrates, and commissioner; as well as for extending the jurisdiction of the Calcutta court of circuit, and Nizamut Adawlut, to Serampore.

R. — 1808.
Section XIII.
Provisions for
administering
criminal justice
in Chanderna-
gore and Chin-
surah, extended
to Serampore.

First. THE provisions contained in Regulation XVI, 1805, for the administration of justice in criminal cases within the settlements of Chandernagore and Chinsurah, and for extending the jurisdiction of the Calcutta court of circuit, and court of Nizamut Adawlut, over those settlements, are hereby extended to the settlement of Serampore, with the following modifications.

What powers to
be exercised by
magistrates at
Serampore, and
what rules to
guide them.

Second. THE magistrates of the European and native courts at Serampore, in the cognizance of criminal offences, shall respectively exercise, over the persons subject to their jurisdiction, the same powers as are vested in the magistrates of Chandernagore and Chinsurah respectively, by the regulation abovementioned; and shall be guided by the same rules in the performance of their duties, as far as the same may be applicable.

In cases not
provided for by
Regulation
XVI, 1805,
magistrates at
Serampore how
to be guided.

Third. In all cases not provided for by Regulation XVI, 1805, or by the present regulation, the magistrates of the European and native courts at Serampore shall be guided by the

* This regulation not being yet published, the number of it cannot be specified. But it will probably be the last regulation of 1808. As well as the laws that can be specified in this part of the Analysis.

laws.

laws, rules, and forms, which were in force before the subjection of that settlement to the British Government.

Fourth. "THE commissioner at Serampore shall possess a concurrent jurisdiction with that of the magistrates of the European and native courts, in all matters of a criminal nature; as well as a general superintendence of the police; and he is hereby declared competent to interpose his authority and controul, whenever the same may appear necessary."

What powers to be exercised by the commissioner at Serampore, in criminal matters, and in superintendence of the police.

"Two general jail-deliveries for the settlement of Serampore shall be holden annually, at Serampore, by one of the judges of the court of circuit for the division of Calcutta, immediately after the half yearly jail-delivery for the settlements of Chandernagore and Chinsurah."

Section XIV. Jail-deliveries for Serampore at what period, and by whom, to be held.

"THE commissioner at Serampore shall perform the duties prescribed to the magistrate of Chandernagore and Chinsurah by Sections VIII, IX, and X, Regulation XVI, 1805, and generally the whole functions of the magistrate, prescribed by that regulation, which may not more properly appertain to the magistrates of the European and native courts at Serampore."

Section XV. What duties prescribed in Regulation XVI, 1805, to be performed by the commissioner at Serampore.

SECTION IV.

O N T H E P O L I C E.

Preamble to R. XXII, 1793. Landholders and farmers of land formerly bound to keep the peace, and answerable for robberies, in Bengal, Behar, and Orissa.

This responsibility found of little effect, and consequent reasons for a new system of police, introduced in December 1792, and established, with amendments, by R. XXII, 1793.

R. XXII, 1793. § II. Police, declared to be under the exclusive charge of officers of government. Landholders and farmers required to discharge their police establishments, and not to entertain such as others.

AT the time of forming the decennial settlement of the land revenue, for the provinces of Bengal, Behar, and Orissa, in the year 1790, the landholders and sudder farmers of land, in conformity with former usage, were bound, by a clause in their engagements, to keep the peace; and in the event of any robbery being committed in their respective estates, or farms, to produce the robbers, and property plundered. But the general impracticability of enforcing this engagement rendered it of little effect; and in many instances robberies, and other breaches of the peace, were found to be promoted by collusion between the perpetrators of them, and the police officers entertained by the landholders and farmers of land, in virtue of the clause referred to. With a view therefore to correct this abuse, and to afford more effectual protection to the persons and property of the people, a new system of police was established by government on the 7th December 1792; the rules of which, with amendments, were re-enacted in Regulation XXII, 1793. By Section II, of this regulation, the police of the country was declared to be under the exclusive charge of the officers who might be appointed to the superintendence of it on the part of government; and the landholders and farmers of land, who were before bound to keep up establishments of police officers for the preservation of the peace, were required to discharge them, and prohibited

from

from entertaining such establishments in future. It was further declared by Section III, that "landholders and farmers of land are not in future to be considered responsible for robberies, committed in their respective estates or farms, unless it shall be proved that they connived at the robbery; received any part of the property stolen, or plundered; harboured the offenders; aided, or refused to give effectual assistance to prevent, their escape; or omitted to afford every assistance in their power to the officers of government for their apprehension; in either of which cases they will be subject to be prosecuted personally for the crime, or offence, before the court of circuit; and if convicted, their lands and effects will be liable to be sold, at the discretion of the Governor General in Council, to make good the value of the property stolen, or plundered, to the owner."

§ III.
Responsibility
of landholders
and farmers
modified in
consequence.

The zillah magistrates were at the same time required to divide their respective zillahs, including the rent-free lands,* into police jurisdictions. Each jurisdiction to be ten cofs, (twenty miles,) except where local circumstances might render it advisable to form them of greater or less extent. The guarding of each jurisdiction to be committed to a darogah, or superintendent, with an establishment of police officers, to be paid by government. The darogahs, with their establishments, to be stationed in the centre of their respective jurisdictions, unless, for special reasons, it be thought expedient to fix them in any other situation. And the magistrates to endeavour to form the jurisdictions in such a manner, as to bring the principal towns, bazars, and gunges in the centre of them; that the police establishments may protect such places, as well as the circumjacent country. The police jurisdictions were ordered to be numbered and named after the places at which the darogahs and their establishments might be stationed. And the magistrates were directed not to change the names or numbers of

V. § 1.
Zillahs to be
divided by the
magistrates into
police jurisdic-
tions. Their
extent, and by
whom to be
superintended.

§ V.
Jurisdictions to
be numbered
and named.

* *Lackheraj*, which should be rendered *tax-free*, rather than *rent-free*, as lands of this description are not exempt from rent to the proprietor, but from the public assessment only.

6. VI.
Police darogahs
to be nominated
by the magi-
strates; and se-
curity to be given
by them.

How far the
above original
rules are still in
force.

R. V. 1804, §
X.
Police darogahs
since included
in general rules
for the appoint-
ment and re-
moval of native
officers in the
Judicial De-
partment.

R. XXII, 1793,
§ XXVI.
Cities of Dacca,
Moorshedabad,
and Patna, or-
dered to be di-
vided into
wards. Each
ward to be su-
perintended by
a darogah, sub-
ject to the city
cutwal.

§ XXVII.
Wards to be
numbered and
named.

§ XXVIII.
Rules for nomi-
nation, city
cutwals, and
darogahs; and
security to be
given by the for-
mer.

the jurisdictions, nor to alter the limits of them, without the sanction of the Governor General in Council. The magistrates were authorized to nominate the darogahs in the first instance; and to fill up all future vacancies; under responsibility for selecting persons duly qualified. But no person to be appointed darogah without giving security for his appearance in the sum of one thousand rupees; viz. himself five hundred, and two responsible persons two hundred and fifty rupees each. These original rules for the police jurisdictions of the several zillahs in Bengal, Behar, and Orissa, (exclusive of Cuttack) and for the appointment of the police darogahs, are still in force. But further provisions, to prevent the removal of those officers, without proof of incapacity or misconduct to the satisfaction of the Governor General in Council, have been superseded by the general rules contained in Regulation V, 1804, and referred to in the first part of this Analysis* for the appointment and removal of the native officers of government in the Judicial, Revenue, and Commercial Departments. "The magistrates of the cities of Dacca, Moorshedabad and Patna, were directed by Section XXVI, Regulation XXII, 1793, to divide those cities, and the adjacent places subject to their respective jurisdictions, into wards. Each ward to be guarded by a darogah, with a proper establishment; and the darogahs to be under the immediate authority of a cutwal. The wards to be numbered and named, and their numbers, names, and limits not to be changed without the sanction of the Governor General in Council; as prescribed with respect to the zillah jurisdictions. The rules for the nomination of the zillah darogahs were also declared applicable to the darogahs of wards, and city cutwals; except that no person should be appointed cutwal of either of the cities specified, without giving security for his appearance in the sum of five thousand rupees, viz. himself two thousand

five hundred; and two responsible persons, one thousand two hundred and fifty each.

THE powers and duties of the police officers appointed under the above rules for the provinces of Bengal, Behar, and Orissa, being, in many respects, the same as those of the police officers appointed in the province of Benares, and in the ceded and conquered territory, within the divisions of Barilly and Benares; it will be convenient to state, in the first instance, the general provisions made for the police of those divisions.

Powers and duties of the police officers in Bengal, Behar, and Orissa, to be hereafter stated.

By Regulation XVII, 1795, the police of the province of Benares, was placed under the joint charge of the tehseldars, or native collectors of the public revenue, and, subordinately to them, of the land-holders and farmers of land, who, by their engagements to government, were bound to maintain the peace and apprehend all disturbers of it, in their respective estates and farms; as well as to recover, or make good the value of, all property robbed or stolen within their boundaries. The tehseldar was accordingly declared responsible for robberies or thefts in the first instance; and the land-holders and farmers to the tehseldar; under a provision that for night robberies in open roads or woods, neither the tehseldar, land-holder, or farmer, should be held responsible, unless it be proved that they had such knowledge of circumstances, as might have enabled them to prevent the robbery or theft; but that for thefts or robberies in inhabited places they should be considered liable to responsibility; whether notice of the arrival of the owners of the property stolen, or robbed, have been given to them or not; if, under the circumstances of the case, the magistrate be of opinion that the theft or robbery was committed with their connivance, or that the perpetration of it be ascribable to their want of care or vigilance. The limits of each tehseldar's revenue jurisdiction, with the lakhersaj lands included therein, were to constitute a police jurisdiction: the guarding

A. R. XVII, 1795. Preamble and Section II. System of police formerly established in the province of Benares,

Section III.

Section IV.

of which was committed generally to the tehseldar, and under him, to the land-holders and farmers, for their respective limits. At the same time provision was made for the police of the city of Benares, and of the towns of Mirzapore, Ghazepore and Jounpore, by the appointment of cutwals, and darogahs of wards, with establishments payable by government, in the same manner, as for the cities of Dacca, Moorshedabad, and Patna. This system was extended to the ceded provinces, by Regulation XXXV, 1803, with a provision, that whenever police establishments for cities, large towns, or principal gunges (the charge of which was to be defrayed by government) should be employed within the jurisdiction of a tehseldar, they should be considered as fully under his orders, as the police establishments entertained by himself; excepting cities or towns where the magistrates reside, the police officers of which were to be under the exclusive authority of the magistrate. It was further provided, that the whole of the rules of police, relative to tehseldars, should be equally applicable to huzoory land-holders, whose revenue, instead of being collected by a tehseldar, is paid immediately into the collector's treasury. This last provision was also applied to the huzoory zemindars in the province of Benares by Section V, Regulation VII, 1807. And the whole of the rules enacted for the police of the ceded provinces were extended to the conquered provinces in the Doab, and on the right bank of the Jumna, as well as to Bundelcund, by Section IX, Regulation IX, 1804; with a provision that nothing therein contained should be construed to exonerate the zemindars, farmers, or other holders of land, from the duties and responsibility imposed on them by the terms of their existing engagements, or by the ancient and established usages of the country, which may not have been superseded by competent authority, for the prevention of robberies and other disorders, and for the maintenance of peace and good order within their respective limits.

Sections XXIII,
XXIV, XXV.

C. P. R.
XXXV, 1803,
§ II, III, IV.
The same system extended to the ceded provinces.

§ XXIII.
With provision respecting cities, large towns, and principal gunges.

§ XXVI.
Further provision respecting huzoory land-holders paying revenue into the collector's treasury.

B. R. VII,
1807, § V.
Applied also to huzoory land-holders in Benares.

C. P. R. IX,
1804, § IX.
Rules for police of ceded provinces extended to conquered provinces in the Doab, and on the right bank of the Jumna; as well as to Bundelcund.

THE tchseeldary system of police thus established in the province of Benares, and in the ceded and conquered provinces within the divisions of the Bareilly and Benares courts of circuit, was found inefficient for the purposes intended by it; and open to material objections, as well from a proper establishment of police officers not being maintained by the tchseeldars; and from such as were appointed by them not being sufficiently under the controul of the magistrates; as from the frequency of alterations in the extent of their jurisdictions; in consequence of some of the estates composing them becoming *huzoory*, under the option given to the landholders to pay their revenue directly into the treasury of the collector. Such estates were, in many instances, too small to admit of a separate police establishment being kept up by the proprietors of them; and were often intermixed with other estates, either subject to a tchseeldar, or paying revenue immediately to the collector. Compact local jurisdictions, which are essential for a good police, were therefore incompatible with such an arrangement; and could not be obtained without resuming the general charge of the police of the country from the tchseeldars, and huzoory land-holders, and placing it under officers on the part of government, subject to the immediate controul of the zillah and city magistrates: still leaving the duties of the local police to be performed by the land-holders and farmers of land, within their respective estates and farms, subordinately to the officers of government. Such parts of the regulations above cited as declared the police of the province of Benares, or of the ceded and conquered provinces, in the divisions of Bareilly and Benares, to be under charge of the tchseeldars, and huzoory land-holders, or which prescribed their duties as principal officers of police, were accordingly rescinded by Sections II, and III, Regulation XIV, 1807; and the following rules were established by the succeeding sections of that regulation.

Preamble to C.
P. R. XIV,
1807.
Objections
found to the
tchseeldary sys-
tem of police.

C. P. R. XIV,
1807.
§. II, III.
Police resumed
from charge of
the tchseeldars
and huzoory
land-holders.

Section IV.
And new system established from commencement of Fulsly year 1215.

" FROM the commencement of the ensuing Fulsly year 1215, the charge of the police of the country, throughout the whole of the provinces specified in the two preceding sections, shall be vested, subject to the controul of the zillah and city magistrates, in the officers who may be appointed to the superintendence of it on the part of government; and subordinately to them, in the landholders and farmers of land, who, by their engagements are responsible for the preservation of the peace, within the limits of their respective estates and farms."

Section V, C. 1.
Zillahs to be divided into compact police jurisdictions.

" THE several zillahs, in the divisions of the Benares and Bareilly courts of circuit, together with the mehals under the magistrate of the city of Benares, shall be divided into compact police jurisdictions; including, indiscriminately, the estates of huzoor tehseel land-holders, and of mehals paying revenue through a tehseeldar; as well as lakheraj lands, of every denomination, held exempt from the public assessment."

Section V, C. 2.
To be of two descriptions, fudder and mofussil.

" THE police jurisdictions shall be of two descriptions. First, such as are established at the station where the zillah or city court is held; and which shall be denominated the " fudder police jurisdiction." Secondly, such as are established at any place not being the station where the zillah or city court is held; and which shall be denominated the " mofussil police jurisdiction."

Section VI, C. 1.
Fudder police jurisdictions, what to comprise.

" THE fudder police jurisdiction shall comprise the city or town, at which the zillah or city court is held; together with such part of the suburbs and environs, as it may be judged expedient to place under the superintendence of a cutwal, with an establishment of darogahs, jemadars, burkundazes, and chekedars, and other watchmen, proportioned to the extent and population of the jurisdiction."

Section VI, C. 2.

" THE mofussil police jurisdictions shall respectively comprise

prise a considerable town or gunge, at which the superintendent of the jurisdiction shall be stationed; together with such part of the adjacent country, as it may be deemed advisable to place under the superintendence of a darogah, with an establishment of jemadars, burkundazes, and chokeedars, or other watchmen proportionate to the extent and population of each jurisdiction."

What to be included in mofussil police jurisdictions.

" IN proposing a distribution of mofussil police jurisdictions, and the requisite establishments for them, the magistrates are to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country; but the latter shall, in no instance, exceed ten coss square, for any one police jurisdiction; unless peculiar local circumstances shall appear to require it, in which case they are to be reported, through the court of Nizamut Adawlut, for the consideration of government."

Section VI, C.

3. Circumstance to be considered in proposing mofussil jurisdictions.

And limitation of their extent.

" IF the principal town or gunge, included in any mofussil police jurisdiction, shall, from its extent and population, appear to require a cutwalee establishment; or if it appear expedient, in any instance, to include more than one considerable town or gunge within a mofussil police jurisdiction, and to station a naib darogah, or a jemadar, with a subordinate establishment of burkundazes, chokeedars, or other watchmen, at the town or gunge, which may not be the station of the darogah of the jurisdiction; the magistrates shall propose such arrangement, through the court of Nizamut Adawlut, for the orders of the Governor General in Council."

Section VI, C.

4. Provision for any requisite cutwalee establishment, and subordinate police establishment, in mofussil jurisdictions.

" THE police jurisdictions of the several zillahs, as well as those under the magistrate of the city of Benares, shall be numbered; and named after the places at which the superintending officers are stationed. The magistrates shall, as soon as possible after the receipt of this regulation, submit a statement of police jurisdictions,

Section VII.

C. 1. Police jurisdictions to be numbered and named.

Statements to be submitted by magistrates on receipt of this regulation.

jurisdictions, formed according to the provisions of it, together with a statement of the requisite police establishments for each jurisdiction, through the courts of circuit, to the court of Nizamut Adawlut; and after obtaining the approbation of the Governor General in Council thereto, the names, numbers, limits, or establishments, of the several jurisdictions, shall not be changed without the previous sanction of government."

Section VI, C.
2.
Power reserved
to government
of discontinuing
or altering any
police jurisdic-
tion or esta-
blishment.

" PROVIDED, that it shall be, at all times, competent to the Governor General in Council to order the discontinuance of any police jurisdiction, or establishment, which may appear to him unnecessary; or any alteration therein, which he may deem expedient.

Section VIII.
C. 1.
Cutwals and
darogahs by
whom to be
nominated.

" THE magistrates shall nominate the cutwals, and police darogahs, through the court of Nizamut Adawlut, for the approbation of the Governor General in Council. They will in consequence be held responsible for selecting persons duly qualified; and are required, in every instance, to report to the Nizamut Adawlut, any information obtained by them respecting the past employments, character, and qualifications, of the persons proposed by them.

Section VIII.
C. 2.
Security to be
given by cut-
wals.

" THE cutwals of the city of Benares, and town of Mirzapore, are already required, by Section XXV, Regulation XVII, 1795, to give security for their appearance, in the sum of five thousand rupees; namely, the cutwal himself in two thousand five hundred, and two responsible persons in one thousand two hundred and fifty each. The cutwal of the town of Juanpore is required, by the same section, to give security in half the above amount. It is further hereby provided, that no person shall be appointed cutwal of the cities of Allahabad, Agra, Furruckabad, or Bareilly, unless he shall have given security for his appearance in the sum of five thousand rupees; viz. himself in two thousand five hundred; and two responsible persons

persons in one thousand two hundred and fifty each. The cutwals appointed to any other stations under this regulation shall previously give security for their appearance in the sum of two thousand five hundred rupees; namely, the cutwal himself in one thousand two hundred and fifty rupees; and two responsible persons in an equal amount."

"THE several police darogahs, who may be appointed under this regulation, shall give security for their appearance in the sum of one thousand rupees; namely, the darogah himself in five hundred, and two responsible persons in two hundred and fifty each."

And by police darogahs.

THE fourth and fifth clauses of the section last quoted also prescribe a form of declaration to be subscribed by every cutwal and police darogah, previously to entering upon the execution of the duties of his office; and a form of sunnud to be granted to them by the magistrate, on their nomination being approved by the Governor General in Council. No person, receiving such sunnud, is removable without the sanction of Government, communicated through the court of Nizamut Adawlut, in conformity with Section X, Regulation V, 1804; Section XII, of which regulation, is also declared applicable to the mohrirs, jemadars, burkundazes, chokeedars, and other officers, appointed on the part of Government, to act under the cutwals and police darogahs; who are thereby authorized to nominate their subordinate officers for the approbation of the magistrate; and to remove them on sufficient cause, shewn to his satisfaction.

Form of declaration to be subscribed by cutwals and police darogahs. And form of sunnud to be granted to them.

Not removable without the sanction of government in form prescribed by Section X, Regulation V, 1804.

Section IX. Provision of Section XII, Regulation V, 1804, applicable to officers acting under cutwals and police darogahs.

THE following Clauses of Section XI, Regulation XIV, 1807, contain the rules of police enacted for the fudder jurisdictions of the several zillahs within the divisions of Bareilly and Benares; and comprise, with some additions and modifications, the rules contained in Regulation XXII,

Reg. XIV, 1807, & XI. Rules of police for fudder jurisdictions of the several zillahs in the Bareilly and Benares divisions. Comprising also the rules of po

lice for cities of
Dacca, Moor-
shedabad and
Patna.

1793, for the police of the cities of Dacca, Moorshedabad and Patna.

Clause 2.
Each jurisdic-
tion to be divi-
ded into wards.
And by whom
to be guarded.

" THE city or town constituting, with its suburbs, the sud-
der police jurisdiction, shall be divided into wards. Each
ward to be guarded by a police darogah, with a jemadar, and
an establishment of burkundazes, chokeedars, or other watch-
men. The several darogahs to be under the superintendence
of a cutwal, and the whole under the immediate control of
the magistrate."

Clause 3.
Watchmen in
what places to
be stationed.

" THE chokeedars and other watchmen are to be stationed
by the cutwal, as the magistrate may direct; and are particu-
larly to watch the entrances of streets and passages, places
where spirituous liquors are sold, and any places where num-
bers of people occasionally assemble; or where, from any
circumstances there may be reason for special vigilance, to
prevent a breach of the peace, or apprehend the persons
by whom it may be broken."

Clause 4.
Rule for pa-
troles.

" THE jemadars of the several wards, with half of the estab-
lishment of burkundazes, and the darogahs with the other
half of their establishments, shall patrol their respective wards
without intermission; the one from sun-set until twelve o'clock
at night; the other from twelve o'clock at night until day-
light. The patroles are to move about with as little noise as
possible, that thieves and other disorderly persons may not
be apprized of their approach. The patroles of the several
wards, and such part of the stationary watchmen as the cut-
wal shall appoint, are to be furnished with a singhara or horn,
which they are to sound when they meet with robbers,
or other persons guilty of a breach of the peace, and
have occasion to give the alarm to each other, or to the
inhabitants of the ward, that they may co-operate for the
apprehension of the offenders. The cutwal is to be careful

that

that the stationary watchmen, and the darogahs and their officers, perform the essential duties prescribed in this clause, regularly and properly; and to report to the magistrate every instance in which they may be guilty of negligence, or misconduct, in the discharge of them."

" To assist the darogahs in obtaining the earliest intelligence of any robbers, or other offenders, who may be concealed, or have taken up their residence, within their respective wards, the mohulladar, and mohulladarin, of each ward, shall be subject to the orders of the darogah; to whom they shall convey immediate information of any offenders who may be found in their respective wards. It shall also be the duty of the bhutiarahs, or other persons in charge of the public serays, and of the ghaut manglees, to deliver in to the cutwal's office, or to the darogah of the ward, daily reports of the arrival and departure of travellers and of all persons of suspicious appearance."

Clause 5.
Mohulladar and mohulladarin, to whom subject; and duty to be performed by them.

Also by bhutiarahs and ghaut manglees.

" ALL private watchmen, entertained by individuals, for guarding their houses, shops, or other premises, within the cutwalee jurisdiction, are required to act in concert with the officers of police in maintaining the peace; and are declared subject to the orders of the cutwal, and of the darogahs of their respective wards, in all matters relative to the police. If such watchmen be found deficient in performing the duties required from them, they shall be dismissed at the requisition of the magistrate; who is also empowered to see that none but proper persons are appointed in their stead."

Clause 6.
Private watchmen what duties to perform; and how far subject to cutwals and darogahs.

Power vested in magistrates, respecting their appointment and removal.

" It shall be the duty of the cutwal, and of the darogahs of wards, to apprehend all murderers, robbers, house-breakers, thieves, pick-pockets, and persons charged with, or suspected of, crimes, or misdemeanors, involving a breach of the peace; as well as all vagrants who may be lurking about their respective

Clause 7.
What persons the cutwals and darogahs are to apprehend; and how to proceed with them.

five jurisdictions, without any offensive means or subterfuge, and who cannot give a satisfactory account of themselves. All such persons, who may be apprehended by the darogahs between sun-rise and sun-set, shall be conveyed to the cutwal's office immediately on their apprehension. If any such persons shall be apprehended between sun-set and sun-rise, they shall be conveyed to the cutwal's office, early in the morning after the night on which they may have been apprehended. The cutwal shall every forenoon, by eleven o'clock, take before the magistrate all persons who may have been apprehended by him, or by the darogahs, during the night, or, subsequently to his report on the preceding day. The cutwal and darogahs are prohibited detaining, in custody, any persons whom they may have apprehended, beyond the time specified, without a special order from the magistrate."

Clause 8.
In what cases
the cutwals and
darogahs may
discharge per-
sons apprehend-
ed by them, on
bail, or on de-
livery of a ra-
zenamah.

And how to
proceed in such
cases.

"THE cutwal and darogahs shall not discharge any persons whom they may have apprehended, without authority from the magistrate for their release; excepting persons who may have been apprehended for petty offences of a bailable nature, and who shall tender sufficient bail for appearance before the magistrate at the time prescribed; or persons charged with trivial offences, such as abusive language, slight trespasses, and inconsiderable assaults or affrays; whom the cutwal and darogahs are permitted to discharge, if, previously to the time prescribed for carrying them before the magistrate, the complainants shall voluntarily deliver a razenamah, or writing desiring to withdraw the complaint; and the defendants shall consent to the complaint being withdrawn. The razenamahs, in such cases, shall be attested by two credible witnesses; and are to be transmitted by the darogahs as well as all bail bonds, and recognizances, on the morning following the night or day on which they may have been executed, to the cutwal; who shall submit them to the magistrate, the same morning on which he may have received them; together with any such writings,

writings, relating to similar cases, that may have been entered into before himself."

" In receiving written complaints, issuing process of summons or warrant, taking bail when tendered in cases of a bailable nature, and taking recognizances from prosecutors and witnesses, when requisite; the cutwal and darogahs of wards, are to be guided by the rules enacted for the guidance of the police officers in general, in Sections XII, XIII, XIV, and XV, of Regulation IX, 1807. They are also to observe the restriction contained in Section XIV, of that regulation, that no summons or other process shall be issued by any police officer, without special instructions from the magistrate, on any charge of adultery, fornication, calumny, or other offence, not involving a breach of the peace."

Clause 9.
By what rules
cutwals and daro-
gahs are to be
guided in is-
suing process,
and taking bail,
and cogniz-
ances.

In what cases
no process is to
be issued, with-
out special in-
structions from
the magistrate.

" THE duty of the cutwal and darogahs of wards, with regard to persons charged with, or found in the act of committing, crimes or misdemeanors, is restricted, in the first instance, to apprehending them and bringing them before the magistrate, either in custody, or under bail, as prescribed. They are not to make any inquiry into the truth of charges preferred to them, without special instructions from the magistrates; nor are they in any case to pass sentence, or impose a fine, or make any exaction, or inflict any punishment, upon any person whatever."

Clause 10.
Restrictions
upon cutwals
and darogahs,
against tak-
ing any judi-
cial inquiry,
passing sen-
tence, or in-
flicting punish-
ment.

" THE restriction in the preceding clause, is not meant to prohibit the cutwal and police darogahs, from taking inquests in cases of murder or other unnatural death; as prescribed by Section IX, Regulation IV, 1797; and Section XXV, Regulation XXXV, 1833; nor to prohibit their making the local inquiry directed in Section XVIII, Regulation IX, 1807, on information being received of a recent robbery, or other violent crime, within their respective jurisdictions; nor to prevent their taking the voluntary confession of persons apprehend-
ed

Clause 11.
Exemption of
restrictions in
preceding
Clause, not
meant to pre-
vent inquests
and other au-
thorized in-
quiries.

ed by them, in the manner authorized by Section XVII, Regulation IX, 1807. But no person shall be detained in custody by them, for any of the purposes stated, without being taken before the magistrate, as required by clause seventh of this section."

Clause 1's.
For what acts
cutwals, daro-
gahs, and their
officers liable
to a criminal
prosecution, or
civil action.

" THE cutwals and darogahs, and all officers under their authority, shall be liable to a criminal prosecution before the magistrate and court of circuit, or to a civil action in the Dewanny Adawlut, for corruption, extortion, or oppression; and for all acts done by them in opposition to this regulation, or to the provisions of any other regulation in force."

C. P. R. XIV,
1807, § XII,
C. 4.

Third and
Fourth Clauses
above cited, ex-
tended to towns
and gunges, at
which darogahs
of mofussil po-
lice jurisdic-
tions are station-
ed in Bareilly
and Benares di-
visions.

And Sixth
Clause applic-
able to all pri-
vate watchmen
in mofussil ju-
risdictions.

THE rules for stationary watchmen and nightly patrols, in the sudder police jurisdictions of the Bareilly and Benares divisions, contained in the third and fourth clauses above cited, are extended by the fourth clause of Section XII, Regulation XIV, 1807, to the towns and gunges, at which the darogahs of the mofussil police jurisdictions may be stationed. The sixth clause is also declared applicable to all private watchmen, entertained by individuals for guarding their houses, shops, or other premises; within the towns, gunges, or other places, forming part of any mofussil police jurisdictions in the zillahs which compose the two divisions specified. * And by a ge-

R. XXII, 1793,
§ XIII, XIV;

* The provisions contained in the three clauses referred to, have not been expressly enacted in any regulation yet passed, for the police of Bengal, Behar, and Oolla. But the detailed instructions in the two first clauses mentioned, may be applied, at the discretion of the magistrates, to any towns or gunges, in which there are cutwals establishments; or any sufficient establishment of stationary watchmen and patrols; and the whole of the zillah magistrates are authorized to cause the dismissal of any of the village watchmen who shall not perform the duties of police required from them. It is further provided by the fourth clause of Section XII, Regulation XIV, 1807, for the divisions of Bareilly and Benares, and virtually by the first clause of Section XIV, Regulation XII, 1807, for the other province, that the police officers main-
tained on the part of government shall be assisted, in the duties of watching and pat-
rolling, by the village guards and watchmen, who by Section XIII, Regulation XXII, 1793, Section XIII, B. Regulation XVII, 1795, and Section XIII, C. 1 Regulation XXXV, 1803, are declared subject to the orders of the police darogahs.

neral

neral rule extended to the whole of the provinces, all pykes, chokeedars, and other village watchmen, of whatever description, are declared subject to the orders of the police darogah. They are required to apprehend, and send to the darogah, any persons who may be taken in the act of committing murder, robbery, house-breaking or theft; or against whom a hue and cry shall have been raised. It is likewise declared to be their special duty to convey to the darogah of the jurisdiction immediate intelligence of any robbers concealed in their respective villages, or the country adjacent; as well as of any vagrants or other persons lurking about the country, without any ostensible means of subsistence; or who cannot give a satisfactory account of themselves. Village watchmen who shall not act in conformity to this rule, are to be dismissed from their stations, by the landholders or other persons employing them, on the requisition of the magistrate; in addition to the legal punishment they may incur, if proved to have assisted in harbouring any offender or suspected person; or to have connived, in any respect, at his malpractices. The police darogahs are directed to keep a register of the village watchmen in their respective jurisdictions; and upon the death or removal of any of them, the landholders, or others, to whom it may belong to fill up the vacancies, are to communicate to the darogah the names of the persons appointed, for the purpose of being registered by him. For the more complete formation of this register, and to enable the zillah and city magistrates, at all times, to ascertain what number and description of watchmen and guards are maintained in aid of the police, it is further required that every landholder, farmer, merchant, or other person, employing pykes, chokeedars, pasbans, nigabans, baskundars, or any other description of watchmen, or guards, shall, in the first month of every Bengal, Fussy, or Willaity year, (according to the era current in the district) transmit to the magistrate a list made up to the last day of the preceding year; specifying the names, occupations, places of residence,

re-enacted for
Bengal, by R.
XVII, 4795,
§ XIII, XIV;
and for the ce-
d provinces,
by R. XXXV,
1803, § XIII,
XIV.
General rule,
for all the pro-
vinces, declar-
ing village
watchmen sub-
ject to orders of
the police da-
rogahs. And
prescribing du-
ties to be per-
formed by
them.

Penalty for dis-
obedience.

Register to be
kept of such
watchmen.

R. XII, 1807,
§ XXI.
Annual lists of
watchmen em-
ployed by indi-
viduals to be
furnished to the
magistrate,

Penalty for neglect to furnish such lists; and for wilful omissions in them.

residence, and allowances in land or money, of the persons so entertained by them. Any neglect to furnish such lists, (especially after being called upon by the magistrate) as well as any wilful omission to include in them persons actually employed as guards or watchmen, of whatever denomination, is declared liable to a fine to government not exceeding two hundred rupees; to be determined by the magistrate according to the situation of the party and circumstances of the case.

Establishment of officers under the immediate authority of the police darogahs.

THE darogahs of the mofussil police jurisdictions, besides the aid of the watchmen above noticed, have under their immediate authority, a mohrir, or writer; one or more jemadars, who command detached parties, and occasionally act for the darogah, in his absence, or at subordinate stations; and an establishment of burkundazes, or matchlock-men, varying from ten to twenty, thirty, or forty, according to the extent, and population, or other local circumstances of the jurisdiction.* The general duty of the police darogah, and of the officers appointed to act under him, is to maintain the peace;† to prevent,

General duty of police darogahs and their subordinate officers.

* Under instructions of the Nizamut Adawlut issued, with the sanction of government, on the 21st January 1808, the thanah and cutwalee burkundazes are ordered to be armed with a spear and matchlock; or with a sword and spear; as, in different situations, may appear most expedient. Besides the police establishments specified, guard boats are allowed in particular situations, where they appear necessary. Such boats are under the immediate direction of the magistrates; but by an order of government, passed on the 23d January 1806, have been placed under the control of the courts of circuit; and the magistrates are instructed to report to the latter, at each session, what services have been rendered by the boats employed under them respectively; that they may be discontinued, if useless, or transferred to another station where there may be occasion for them.

† In addition to the rules contained in Regulation XLIX, 1793, (extended to Benares by Regulation XIV, 1795, and re-enacted for the ceded provinces, with an additional section concerning the substance of the circular order mentioned below, by Regulation XXXII, 1803) for preventing affairs respecting disputed boundaries, lands, crops, and other property, (see page 84 of the first part of this Analysis) the magistrates were directed by a circular order from the Nizamut Adawlut under date the 25th October 1797, "to notify to the darogahs of police, under their respective jurisdictions, that they are to consider it their duty, as far as circumstances may admit, whenever they shall receive information of bodies of armed men being collected within

vent, as far as possible, the commission of all criminal offences; to discover and apprehend the offenders, when such are committed; to execute process and obey orders transmitted by the magistrates; and to perform such other services as are prescribed by the regulations. This duty is more particularly defined by the following rules, which have reference to the whole of the mofussil police jurisdictions, as now established, under charge of darogahs, appointed on the part of government.

ANY person having a charge to prefer against another for murder, robbery, theft, or any other crime or misdemeanor, and not choosing to lodge it immediately before the zillah magistrate, is at liberty to prefer it, in writing, to the police darogah of the jurisdiction in which the crime or misdemeanor may have been committed; or, if the offender shall have removed from thence, to the darogah of the jurisdiction in which he may be found. If the complaint be for abusive language, calumny, inconsiderable assaults or affrays, or other petty offences which the magistrates are empowered to determine, without reference to the courts of circuit, it must be written upon stamp paper, bearing a duty of eight annas per roll, or sheet;

R. XXII, 1793, § VII.
B. R. XVII, 1795, § VII.
C. P. R. XXXV, 1803, § VII.
What charges may be preferred to the police darogah, instead of the zillah magistrate.

R. VII, 1800, § XXIII.
C. P. R. XLIII, 1803, § XXIII.
What complaints are required to be written upon stamp paper.

within their respective police divisions, for the purpose of either going to take, or retain, forcible possession of disputed land, or crops, to repair to the spot, and require them to disperse in a given time; on failure of which, to note down their names and places of abode, and to proceed to the residence of the zemindar, talookdar, or farmer, in whose services they may be said to be, and to require him instantly to cause them to disperse; declaring further, in the most public manner possible, the penalties the parties may be liable to, under the provisions made in the several sections of the aforesaid regulation; or such part of them as may be applicable to the case; and after taking these steps to set people to watch the further proceedings of the parties, and report the whole of the circumstances, as they may occur, to the magistrate." The darogahs are further required by Section XIX, Regulation XXII, 1793, Section XVIII, B. Regulation XVII, 1795, and Section XIX, C. P. Regulation XXXV, 1803, to proceed in person, or to depute one or more of their officers, as circumstances may require, to the several towns, gunges, bazars, and hauts, on market days; to prevent any disputes or disturbances arising between the venders and purchasers, or other persons resorting to the markets." And they are directed (in the Benares and Bareilly divisions) "to observe similar precautions on the occasion of all melas, or assemblages of people for religious or other purposes.

and

R. IX, 1867,
§ XII.
Police darogahs
how to proceed
when charges
requiring the
apprehension of
the accused.

and a police officer receiving any such complaint, not written upon the prescribed stamp paper, is liable to dismission from his office. This provision, the object of which is to check litigious reculations of a trifling nature, does not include charges of more heinous offences. Upon a complaint being preferred, in writing, to a police darogah, or other police officer authorized to receive the same, against any person subject to his jurisdiction, "for any crime of a heinous nature, such as murder, robbery, house-breaking, theft, setting fire to a village, house, or other building, or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence, requiring the immediate apprehension of the offender; and on the complainant, or any other credible person or persons, acquainted with the case, deposing on oath (or under a solemn declaration) to the truth of the complaint; the darogah, or other police officer is, by a warrant under his official seal and signature, to cause the person accused to be apprehended; unless any special reason appear why the issue of process for apprehending the party accused shall be stayed, until the charge be reported for the orders of the magistrate, in which case, such report is to be made without delay. If the offence charged be not bailable, or though bailable, if sufficient bail be not tendered by the party accused on his apprehension, the darogah, or other police officer, is to send him in safe custody to the magistrate, within twenty-four hours after apprehending him; or as soon afterwards as circumstances may admit. If the offence charged be bailable, the person, when apprehended, is to be reported for appearance before the magistrate, by the darogah, or other police officer, in writing, and to be released, if he has immediately released the party apprehended. Provided that if it appear necessary to take the person from the party apprehended, for keeping the peace, in order to prevent the commission of such offence, such custody may be required; and he is to be detained without bail, manifest and urgent necessity." The giving of bail and security binds

to be taken under these provisions, as well as the form of warrants to be issued by a police officer, are prescribed in Section XII, Regulation IX, 1807. If the complaint preferred to a police darogah, or other police officer authorized to receive the same, "be for any bailable crime or misdemeanor which may not require the immediate apprehension of the accused, the police officer receiving such complaint, upon the party complaining making oath (or a solemn declaration, as the case may be) to the truth of the complaint, or without such oath (or declaration) if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to by some other credible person or persons, is to issue a summons under his official seal and signature, to be served through a mufti burkundaz, or peon; or through any known and accredited agent of the party complained against, who may be on the spot, and willing to receive the same in behalf of his principal; or in the mode directed by the rules in force for serving warrants on charges of bailable offences, against persons employed in the salt department, or in the provision of the Company's investment, if the person complained against be so employed. The summons is to specify the offence charged; and if it be of a trivial nature, such as abusive language, a slight trespass, or an inconsiderable assault, for which bail is not demandable in the first instance, is merely to require the accused to attend, in person or by vakeel, and answer the charge, before the zillah or city magistrate, on a specific date, to be fixed so as to afford the accused a reasonable and sufficient time for that purpose. If the charge be of a more serious nature, and such as may appear to require bail, to secure the appearance of the party accused, either in person or by vakeel, before the magistrate, the summons is also to specify the bail to be given; which, in no case, is to exceed what may be sufficient to prevent the party's

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abscinding,

R. IX, 1807,
§ XIII.
What process to
be issued if the
complaint be
for any bailable
offence.

absconding, before the case shall come before the magistrate.* The forms of summonses, to be issued under these provisions, are prescribed by Section XIII, Regulation IX, 1807; and are the same as those ordered to be observed by the magistrates. The rules already stated for the service of summonses issued by the magistrates, and for the receipt of acknowledgments or razeenamahs, are also declared equally applicable to the service of summonses issued by the police officers; and to the receipt of acknowledgments or razeenamahs by them. But with a view to guard against the recurrence of experienced abuses, it is provided that no summons or other process shall be issued by any police officer, without special instructions from the magistrate, on any charge of adultery, fornication, calumny, or other offence, not involving a breach of the peace. In such cases the police darogah, or other police officer receiving the complaint, is merely to take the oath (or solemn declaration) of the complainant thereto, and to transmit the same to the magistrate for his orders. Section XV, Regulation IX, 1807, prescribes forms of recognizances to be taken by the police officers from prosecutors and witnesses, binding them to appear before the magistrate on a specific day, under penalty of paying such fine to government, as the magistrate may judge it proper to impose on their non-attendance; besides being subject to the charge of any process which may be consequently issued by the magistrate to compel their appearance.

R. IX, 1807,
§ XIV.

Rules stated for service of summonses issued by magistrates, and for receipt of acknowledgments and razeenamahs, applicable to service of summonses issued by police officers, and to receipt of acknowledgments and razeenamahs by them.

Proviso, with respect to charges of adultery, fornication, calumny, or other offence not involving a breach of the peace.

R. IX, 1807,
§ XV.

Recognizances to be taken from prosecutors and witnesses.

R. IX, 1807,
§ XVII.

Inquiry to be made by police officers, on apprehension of persons charged with any heinous offence.

WHEN any person is apprehended, and brought before a police darogah, or other police officer authorized to issue a warrant of apprehension, upon a charge of murder, robbery, or other heinous crime, an examination of the prisoner, without oath, is to be taken, in the presence of three or more credible witnesses (who are to attest the examination) and in the event of his making a free and voluntary confession, he is to be questioned fully on the whole of the circumstances of the

the case; the persons concerned in the commission of the crime; and if any property have been stolen or plundered, the persons in possession of such property; or the place where it has been deposited. If any witnesses to the fact, or persons acquainted with the circumstances of the case, be present, or on the spot, they are also to be questioned without oath, and the substance of any material information obtained from them is to be stated in a slooruthal, or report, to be authenticated by the attestation of the persons examined, and transmitted to the magistrate, under the signature of the police officer by whom the inquiry may have been made. But no compulsion is to be used, either against parties or witnesses, for the purpose of obtaining the information specified, or any other information whatever; neither shall a prisoner be persuaded, or threatened, nor any promise or hope of pardon be held out to him, for the purpose of inducing him to confess; and it is declared that any species of maltreatment, to a prisoner or witness, by a police officer, or by any other person, will subject the offender to exemplary punishment, on conviction before the magistrate, or court of circuit. The police darogahs, and other officers of the police, are further prohibited, under penalty of immediate dismissal from office, to detain any prisoners, without sending them to the magistrate, beyond such time as may be indispensably requisite for the prescribed inquiry; and if from any cause such inquiry cannot be completed within forty-eight hours, after the arrival of a prisoner at the catchery or station of the police officer, the prisoner is, notwithstanding, to be sent to the magistrate with a report of the case, for such additional inquiry, or instructions, as the magistrate may judge necessary. The following rule has been prescribed for police darogahs and other local police officers, in taking inquiries. " *First.* That whenever information is lodged of a person having died an unnatural death, they proceed to the spot on which the body has been found. *Second.* That they examine the body, to ascertain whether there are any

Prohibition
against compul-
sion, or any un-
fair proceedings,
in making such
inquiries.

And no prison-
er to be detain-
ed, without
being sent to the
magistrate, be-
yond forty
eight hours.

R. IV, 1797,
§ IX.
C. F. R.
XXXV, 1803,
§ XXV.
Rule for in-
quiries to be ta-
ken by police
darogahs.

any marks of violence upon it, and if there are any wounds or bruises, to ascertain the number of them, the length, breadth, and depth of each wound; with what weapons the wounds or hurts may appear to have been given; and the parts of the body on which they may have been received. *Third.* That they describe particularly the place on which the dead body may be found, and whether the murdered person appears to have been killed on the spot, or to have been brought and laid there; and that they ascertain particularly the name of the deceased person, if any person present should recognize him. *Fourth.* That if the person murdered shall appear to be a stranger, and his name shall not be known, they are to endeavour to ascertain where he was last seen, and where he slept the night before. *Fifth.* That the above inquiries be made in the presence of creditable people of the neighbouring villages, and committed to writing; and that they require the persons present to affix their names to the paper; which is likewise to be attested by their own signature, and that of the police mohurrir of the jurisdiction, and forwarded without delay to the magistrate*. "The police officers are further required to make it an invariable rule," whenever information is received by them of a recent robbery, or other violent crime, within

R. IX, 1807,
§ XVIII.
Police officers
how to proceed
when information
is received

* The following letter was circulated to the zillah and city magistrates, by order of the Nizamut Adawlut, on the 28th February 1799 "The Court of Nizamut Adawlut having observed, in several cases brought before them by the courts of circuit, that persons wounded have been carried by their friends to the police thanahs, and have died on the road, or soon after their arrival, in which cases it may be presumed that the removal of the wounded party has contributed to his death; the court desire you will cause a public notice to be issued at each of your police thanahs, and also instruct your police officers to notify, as occasion may offer, to the inhabitants, that in the event of any person being wounded by robbers, or others, in such manner that he cannot be conveyed to the police darogah without hazard to his life, it is not necessary to remove such person from the place where he can be best taken care of; but that notice should be immediately given to the police darogah, who will either proceed himself to see the wounded party and make the necessary enquiry on the spot, or, if prevented from going personally, will depute a proper officer for this purpose. You are further to instruct your police darogahs to proceed themselves, if possible, on all such occasions, immediately on receiving information of the occurrence, as they are required to do in all cases of an unnatural death, by Section IX, of Regulation IV, 1793."

their respective jurisdictions, to repair in person to the spot, or to send a fit person from among the officers acting under them, to ascertain the facts and circumstances of the case; and procure all the information, which it may be practicable to obtain, for the discovery and apprehension of the offenders. The police officers, making such local enquiry, are to be careful to ascertain, and record, the day and hour when the fact was committed: the situation of the place; the names and descriptions of any persons who may have been recognized as the perpetrators of the crime; by whom such persons have been seen and known; and the names and descriptions of any person suspected of being concerned in the offence committed, the grounds of suspicion against them; also a full recital of the manner in which the crime has been effected; and in cases of robbery, the articles of property stolen or plundered. This inquiry is to be made, and committed to writing, upon the spot: in the form of a *foorut-hal* or report, and in the presence of three or more creditable people of the neighbourhood, by whom it is to be attested, and it is to be then forwarded without delay, for the information of the magistrate. It is further declared to be the duty of the police officers, on such occasions, to apprise the persons present, that their suppression or denial of any knowledge, which they may possess, relative to the perpetrators of the crime, will tend to invalidate their testimony, in the event of their deposing to such knowledge at a future period: at the same time, giving encouragement to all persons, who may have been present at the commission of a crime, to make a full communication of every fact and circumstance within their knowledge, respecting the offenders; and taking their information or evidence, with such precautions of secrecy as may appear requisite, when persons supposed to have recognized any of the offenders may appear to be deterred from publicly naming them, under fear of the consequences, if the parties named should not be apprehended.

of a recent robbery, or other violent crime, within their jurisdictions.

Excepting cases in which the police officers are specially authorized to make inquiries, either by the regulations or by the orders of the magistrate, they are prohibited from inquiring into the truth of any complaint preferred to them; as well as, in all cases, from passing sentence upon any complaint; from imposing a fine; or inflicting any punishment; and from making any unauthorized exaction from the prosecutors, the accused, their respective witnesses, or any other persons whomsoever. They are likewise forbidden to discharge persons accused after having apprehended them, except in cases wherein they are authorized to accept bail or security, or to receive acknowledgments and razeenamahs.

Police darogahs are authorized to apprehend without a written charge, and without issuing a dastuk or writ, persons found in the act of committing a breach of the peace, or against whom a general hue and cry shall have been raised. Also any notorious dekoits, or robbers, within their respective jurisdictions, of whom they may receive information; as well as all *Geedur mars*, *Malachees*, *Syrbejuahs*, or other descriptions of vagrants, or suspected persons, who may be lurking about their jurisdictions, without any ostensible means of subsistence; or who cannot give a satisfactory account of themselves. All persons so apprehended are to be sent, in safe custody, to the magistrate; who is directed to examine on oath, * such vagrants or suspected persons, as well as any other persons acquainted with their usual place of residence, occupation, or

* The oath of the party himself is of course to be taken only upon the circumstances mentioned, viz. his usual place of residence, occupation, and means of livelihood. If questioned upon any specific charge, or criminal offence, his examination must be taken without oath, in conformity with the general rule before cited, from Regulation IX, 1793, Section V, re-enacted for the ceded provinces by Section V, Regulation VI, 1803. In the latter, and conquered provinces, the police officers and village watchmen are directed by Section XV, Regulation XXXV, 1803, to be careful not to confound strangers coming from the adjacent districts or countries, for the purpose of cultivating land, or exercising their professions; with the vagrants and suspected persons whom they are authorized to apprehend.

R. XXII,
1793, § XI.
R. XVII,
1795, § XL.
C. P. R.
XXXV, 1803,
§ XL.
R. IX, 1807,
§ XVI.
Police officers
prohibited
from making
inquiries re-
specting truth of
complaints, un-
less specially
authorized.

Also in all cases
from passing
sentence, im-
posing a fine,
inflicting any
punishment, or
making any un-
authorized ex-
action.

Likewise for-
bidden to dis-
charge persons
apprehended,
except in cases
authorized.

R. XXII,
1793, § VIII,
X.

R. R. XVII,
1795, § VIII,
X.

C. P. R.
XXXV, 1803,
§ VIII, X.
What persons
may be appre-
hended by po-
lice darogahs
without a writ-
ten charge; and
without issuing
a warrant.

Persons so ap-
prehended to
be sent to the
magistrate; and
what proceed-
ings to be held
by him.

mode of obtaining their livelihood; and if there appear to him grounds for supposing that they are disorderly or ill disposed people, he may employ them in repairing the public roads, or upon any other public work, until they find security for their good behaviour in case of their being discharged; or until some creditable persons shall agree to entertain them in their service; or the magistrate shall be satisfied, from their deportment whilst in his custody, or other circumstances, that they will of themselves take to some service or employment, so as to obtain an honest livelihood; in either of which cases the magistrate is to discharge them. If any person so apprehended shall make his escape from the custody of the magistrate before he is regularly discharged, and shall be reapprehended, he is to be imprisoned and kept to hard labour for six months. *

Penalty for escape of such persons from custody of the magistrate.

POLICE darogahs are authorized to dispatch letters by the public dawkh, or where there is no dawkh, by the heads of villages, not only to the other darogahs and magistrate of the zillah in which they are employed; but to the darogahs and magistrates of other zillahs, to whom they may have occasion to send notice of any breaches of the peace. And they are directed, whenever they receive intelligence of any murder or robbery, the perpetrators of which may not have been apprehended, to dispatch immediate information of it to all the neighbouring darogahs, as well as to the magistrates of the ad-

R. XXII, 1798, § XV. By what conveyance the police darogahs are to dispatch letters.

Intelligence of murders and robberies to be communicated by them to neighbouring darogahs and magistrates.

* In consequence of several instances of homicide, committed by persons in a state of insanity, the magistrates were further directed by an order of the Nizamut Adawlut, issued with the sanction of government, on the 6th January 1801, "to instruct the police darogahs under them to secure, and send to the sudder station of each district; all insane persons within the limits of their respective thanahs, from whose insanity they may have reason to apprehend any fatal effects, unless their friends shall enter into engagements to take such care of them as to prevent the possibility of their doing any mischief; and to cause them to be confined in a separate ward, with proper attendance, in the jails; charging in a contingent bill any extra expense incurred in consequence." Insane hospitals have since been established at the stations of the several courts of circuit, for the reception and care of lunatics within each division.

R. XXII,
1793, § XVI.
B. R. XVII,
1795, § XV.
C. P. R.
XXXV, 1803,
§ XVI.
In what cases
they are autho-
rized to pursue
persons into
other jurisdic-
tions.
Assistance to be
afforded to
them in such
cases.

Restriction
against warrants
being issued by
them, or by the
magistrates, to
apprehend per-
sons without
their own ju-
risdiction.

R. XXII,
1793, § XVII.
B. R. XVII,
1795, § XVI.
C. P. R.
XXXV, 1803,
§ XVII.
List and state-
ment to be de-
livered, when
persons are ap-
prehended by
police officers,
in the jurisdic-
tion of a magis-
trate to whom
they are not im-
mediately sub-
ject.

adjacent zillahs * darogahs and other public officers are empow-
ered to pursue persons charged with crimes or misdemeanors
into other jurisdictions, whether of the same, or a different,
zillah, provided the act charged shall have been committed
within their own jurisdiction, or the offender was actually with-
in it when the charge against him was preferred. In such
cases the magistrates, police officers, landholders, farmers, vil-
lage gomastahs, cultivators, and all persons having authority,
or residing, within the jurisdiction, into which the offender is
pursued; are required to afford every assistance in their power
for his apprehension. But it is declared not lawful for any
magistrate or darogah to issue a warrant for the apprehension
of an offender residing, or being, in another zillah or jurisdic-
tion, at the time of the complaint being preferred, for any crime
or misdemeanor not committed within the limits of their re-
spective jurisdictions. † It is further directed that whenever
the police officers apprehend persons, in any other jurisdiction
than that of the magistrate under whom they are employed,
they shall deliver to the darogah of the police jurisdiction, in
which such persons are apprehended, a list of their names, and
statement of the crimes or misdemeanors charged against them;
which list and statement are to be immediately forwarded by
the darogah receiving the same to the magistrate whose autho-
rity he is subject to.

* This rule is confined to Bengal, Behar, and Orissa; and is not generally observ-
ed, with respect to communications to the magistrates of adjacent zillahs. It should
be universally enforced (and may be in the Bareilly and Benares divisions without an
express regulation) as far as it regards immediate information of robberies to the
darogahs of neighbouring jurisdictions, whether in the same zillah or not; that the
speediest and most effectual measures may be adopted to discover and apprehend the
offenders.

† Except in cases of actual pursuit, which do not admit of delay, it is usual, and
appears consistent with the spirit of the regulations, when process is issued beyond
the jurisdiction of the magistrate or police officer issuing them, to send them in the
first instance to the magistrate or police officer of the jurisdiction in which they are
to be executed, with a request that he will order the enforcement of them.

DAROGAHS of the police are entitled to receive from government a reward of ten rupees for every dekoit, who may be apprehended by them, to be paid upon the conviction of the offender. * They are also entitled to a commission of ten per cent on the value of all property, stolen or plundered, which they may recover; provided the thieves or robbers be apprehended and convicted. This commission is to be paid by the owner of the property, after a fair valuation of it; or if he refuse, or omit to pay it, the magistrate is authorized to dispose, by public sale, of such portion of the property as may be sufficient to make good the amount.

R. XXII,
1793, §
XVIII.
B. R. XVII,
1795, § XVII.
C. P. R.
XXXV, 1803,
§ XVIII.
B & C. P. R.
XIV, 1807, §
XIII.
Reward for apprehending de-
koits payable
to police of-
ficers.
And commis-
sion on value of
stolen, or plun-
dered property,
recovered by
them.

THE following descriptions of boats, viz: *Lukhas*, from 40 to 50 cubits in length, and $2\frac{1}{2}$ to 4 cubits in breadth; *Jelhas*, from 50 to 70 cubits in length, and $3\frac{1}{2}$ to 5 in breadth, and Chundpoor paunsways of more than thirty oars, being particularly adapted to the use of dekoits, who infested the rivers in the lower parts of Bengal, the construction and use of such boats, without a special written license from the magistrate, are prohibited by Section XX, Regulation XXII, 1793. The police darogahs are enjoined to seize all boats built, used, or transferred, in opposition to this rule; to apprehend, and send to the magistrate, the artificers employed in building, or repairing such; and to report the name of the proprietor of the village in which they may have been built or repaired. The boats so seized are declared liable to confiscation by the magistrate. The artificers employed in building or repairing them are punishable by the magistrate, by imprisonment not exceeding one month, or corporal punishment not exceeding twenty strokes with a rattan. And the zemindar, or other landholder, allowing any boat, of the prohibited descriptions,

R. XXII,
1793, §
XX.
Rules to pre-
vent the con-
struction and
use of particu-
lar descriptions
of boats, in the
lower provin-
ces, without a
license from the
magistrate.

* In the rules for Benares and the ceded provinces the same reward is authorized for apprehending a thief, but it is provided by Section XIII, Regulation XIV, 1807, that the reward of ten rupees for apprehending a thief shall not be paid, except in cases of magnitude, such as may subject the offender to trial and conviction before the court of circuit.

to be built or repaired within the limits of his estate, without a license under the seal and signature of the magistrate, forfeits to government the village in which such boat may be proved to have been built or repaired.

R. XI, 1806,
§ IX.
General prohibition to individuals, not in the public service, against wearing a dress, resembling the uniform of the Company's sepoy and lascars; or a badge of office.

THE police officers in general are further authorized and directed to apprehend and send to the magistrate of the zillah or city, in which they are employed, all persons wearing a dress resembling the uniform of the Company's sepoy or lascars; or a badge of office; in opposition to the rules contained in the following clauses of Section IX, Regulation XI, 1806.

And rule for enforcement of such prohibition.

“ ALL persons, whether European or Native, within the Company's provinces (excepting such privileged persons as the government may specially exempt from the operation of the rule contained in this section) are positively forbidden to dress any of their servants, either for the purpose of parade or of business, in the uniform of the Company's sepoy and lascars; or in a dress so nearly approaching to that uniform, as to enable the persons wearing it to impose themselves on the country people for sepoy and lascars. All natives, excepting those actually in the military service of the Company, or belonging to persons specially exempted by government from the operation of this rule, are forbidden to wear a dress similar to that mentioned in the foregoing clause. Officers of every description, employed in the service of the Company, who are allowed establishments of burkundazes, peons, and pykes, in their official capacity, or who may have occasion to employ persons of any of those descriptions in such capacity, are prohibited from clothing them with a military dress. Native officers and sepoy, excepting subadars, jemadars, and serangs, even though in the service of the Company, who may temporarily reside or have occasion to travel in the interior parts of the country, unless employed

employed on the public service, are forbidden to wear their uniform coats. With the view of giving full effect to the orders contained in the preceding clauses, the military commanding officers of stations, and of detachments, in the interior parts of the country, and the several zillah and city magistrates, are hereby authorized and required to deprive of a military dress any person who shall wear it contrary to these orders; unless it shall appear, that such person is in the military service of the Company, in which case he shall be sent to the corps to which he may belong, with a written complaint against him. No person shall be allowed to distinguish burkundazes, peons, pykes, or other servants, with badges, except the public officers (civil or military) employed in the service of the company, who are allowed establishments of burkundazes, peons, or pykes, in their official capacity, or who may have occasion to employ persons of those descriptions in the public service. The several zillah and city magistrates are empowered and directed to apprehend any person (not being in the service of a public officer of the government authorized to entertain such servants) who shall wear a badge, in opposition to the prohibition contained in this clause, and to deprive him of the badge. Any European, not being a public officer of the government, to whom any of such descriptions of public servants are allowed, employing badged peons, or other descriptions of servants wearing badges, contrary to this prohibition, will be liable to the severe displeasure of government, on representation of the circumstances of the case by the magistrate, who is directed to report all such instances, for the information and orders of the Governor General in Council.

The only further special rule for the guidance of the police officers, which it appears requisite to notice in this place, is contained in Section VIII, Regulation XI, 1806, to the following effect.

R. XI. 1806.
§ VIII.
Assistance to be
afforded by po-
lice officers to
travellers, Eu-

European and Native, passing through their respective jurisdictions, when the same may be required; and under what restrictions.

“WHENEVER any military officer, not commanding nor proceeding with a corps, or detachment of troops, or any other person, (whether European or native) not restricted by Government from passing through the Country, may be proceeding within any part of the Company's provinces, either on the public service, or on his private affairs, and shall be in need of assistance, during his route, to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police, to aid him in providing any requisite bearers, coolies, boatmen, carts, or bullocks, or any necessary supplies of provisions, or other articles. On receiving an application of the above nature, the police officer, to whom it may be made, shall furnish the aid required, or cause it to be furnished by the proper person or persons; provided that a sufficient number of persons, who have been accustomed to act as bearers, coolies, or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture, and occasionally let for hire, can be procured within his jurisdiction. But all police officers are strictly forbidden, under pain of dismissal from office, (under the rules prescribed by Regulation V, 1804,) on applications of the above nature, to compel any persons not accustomed to act as bearers, coolies, or boatmen, to serve on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts, kept for private use, and not for hire, or exclusively appropriated to the purposes of agriculture. Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first police station in the next zillah unless a voluntary engagement to the contrary may be entered into by such persons. The police officers are further enjoined to be careful that a proper compensation for the bearers, coolies, boatmen, carts or bullocks, employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto. For this purpose, the police officers are authorized

to adjust the rate of hire to be paid for the bearers, coolies, boatmen, carts, or bullocks, required, and the price of any articles provided; as well as to demand, that the whole, or a part, according to the circumstances of the case, be paid in advance. Should any traveller refuse to comply with the adjustment or demand so made by a police officer, he will not be entitled to any assistance from the officers of Government under this Regulation."

THE whole of the police darogahs are required to send to the magistrates a monthly report, in writing, containing the names of all persons whom they may have apprehended, the date of their apprehension, the crime or misdemeanor charged against them, the date on which they were dispatched to the magistrate, or released on bail, or discharged upon a razeenamah; and a circumstantial detail of all other acts done by them in their official capacity. The original razeenamahs, in cases wherein the darogahs are permitted to receive the same, viz. in complaints for petty offences (thefts excepted) on which the magistrates are empowered to pass sentence, are likewise to be transmitted with the monthly report, under the attestation of two creditable witnesses. The report is to be dispatched on the fifth of every month, for the month preceding, by the public dawkh, or by such other mode as the magistrate may direct. If it be proved that a darogah has apprehended any persons, or issued orders, or done any official act, not inserted and truly stated in his report, the magistrate is authorized to suspend him, and he is liable to dismissal from his office, by order of government, under the provisions of Regulation V, 1804. * If the darogah of a police jurisdiction,

R. XXII,
1793.
G. XXI.
B. R. XVII,
1795.
G. XIX.
C. P. R.
XXXV, 1803,
G. XX.
Monthly report
to be sent to
magistrates by
police officers.

R. XXII,
1793.
G. XII.
B. R. XVIII,
1795.
G. XII.
C. P. R.
XXXV, 1803,
G. XII.
Razeenamahs
received by po-
lice officers to
accompany
their monthly
reports.

Penalty for
omissions or
false entries in
the reports of
police officers.

R. V, 1804.
G. X.

* On the 2d February 1797, the magistrates were authorized by the Nizamut Adawlut "to remove the police darogahs from one station to another, within their respective zillahs, whenever they may think it advisable, from the darogah of any particular station having acquired an undue local influence; or from consideration of

N. XXII,
1793.
S. XXII.
R. R. XVII,
1795.
C. XX.
C. P. R.
XXXV, 1803.
S. XXI.
R. IX, 1807.
S. XIV, C. 2.
Police officers
liable to criminal prosecution.

jurisdiction, or any officer under his authority, be guilty of corruption, extortion, or oppression, or commit any act repugnant to the regulations, he is declared liable to a criminal prosecution before the magistrate and court of circuit; or to a civil action, for damages, in the dewanny adawlut.*

THE

the greater activity of one darogah than another; or from any other consideration which, in their judgment, may render such occasional exchange of their police darogahs expedient." But the court having reason to believe that the discretion thus vested in the magistrates was too generally exercised, and the local knowledge obtained by a police officer, when not misused, being of material consequence in enabling him to perform, with effect, the duties of his station, the magistrates were instructed, by a second circular order, issued on the 11th July 1807, "to report, in future, to the Nizamut Adawlut, in an English letter, the grounds on which they may consider it expedient to remove any darogah from one station to another, for the information and previous orders of the court." The magistrates were further instructed on the 8th November 1806, to make occasional circuits of their districts, for the purpose of inspecting the police thanahs; applying for the sanction of the Nizamut Adawlut for their making such circuits, when the state of business depending before them, and in the civil courts, may admit of it.

* A doubt having arisen, from the terms of Section XXII, Regulation XXII, 1793, and Section XX, Regulation XVII, 1795, whether it was meant that criminal charges preferred, under those sections, against officers of police, should be received and proceeded upon, by the court of circuit, in the first instance; or whether they should be preferred to the magistrates, and the parties accused be committed or held to bail, by them, for trial, before the courts of circuit; the court of Nizamut Adawlut communicated to the several courts of circuit, by a circular letter, dated the 7th August 1804, their opinion that "it was meant by the regulations and sections in question to give an option, in the cases therein mentioned, either of a civil action in the dewanny adawlut, or of a criminal prosecution before the court of circuit; but that it was not intended by those sections to except any complaint, brought under them, from the regular course of procedure in other cases." The court further observed, that "this construction of the regulations referred to is confirmed by Section XXI, Regulation XXXV, 1803, for the ceded provinces." On a reference from Mr. C. Smith, officiating judge of the Patna court of circuit, to ascertain whether Section XXII, Regulation XXII, 1793, was meant to authorize the court of circuit to receive and try the charges therein referred to, when presented in the first instance to the judge of circuit, the court of Nizamut Adawlut, informed him (on the 4th April 1807,) that in the case of persons presenting complaints against police darogahs, to the court of circuit, the judge of that court should refer them to the magistrate, with directions to enquire into them, and on sufficient ground appearing to commit, or hold to bail, the accused, for trial before the court of circuit. It was however subsequently noticed to Mr. SMITH that if the misconduct of a police officer came regularly before a court of circuit, in the proceedings upon a case under trial, the judge of circuit had no jurisdiction to commit the police officer for any criminal explanation, in any

THE responsibility of the landholders and farmers in the province of Benares, and in the ceded and conquered provinces within the divisions of Bareilly and Benares, for robberies or thefts committed within their respective estates or farms, to which they were subject under the late teliseldary system of police in those provinces, is expressly reserved, under the new system established by Regulation XIV, 1807. They are further declared responsible for the value of any stolen or plundered property, proved to have been brought into their estates, or farms, with their knowledge or connivance; and which they may not have caused to be delivered up; or have given timely information respecting it to the local police officer, or the magistrate. All claims upon the landholders and farmers, for the value of such property, are to be instituted, tried, and decided, in the civil courts; subject to the general rules of appeal. The following provisions relative to landholders and farmers of land, in the divisions of Bareilly and Benares, are also still in force, under Regulation XIV, 1807; and are declared equally applicable to all officers of government, entrusted with, or employed in, the collection of the public revenues; or the rents of estates held khas, or under attachment; it being the duty of every public officer to render any assistance in his power for the support of the police, and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police.

First. " Landholders and farmers of land are required, with the assistance of their pykes, chokeedars, pausbauns, and other descriptions of village watchmen, to give at all times

impose a fine upon him, or otherwise punish him, according to the nature of the case. It was further determined by the Nizamut Adawlut, on the 19th, August 1805, that a public prosecution may be ordered, against a police officer, for misconduct appearing to require exemplary punishment; when the party injured may not avail himself of the option to prosecute, given him by the regulations.

their

tion, or civil action, for corruption, extortion, or oppression, or any act repugnant to the regulations.
R. XIV, 1807, § XIX. Responsibility of landholders and farmers in the divisions of Bareilly and Benares for robberies or thefts committed within their respective estates or farms. And for stolen or plundered property brought into their estates, or farms, with their knowledge or connivance.

Claims in such cases, to be heard and determined by the civil courts. R. X.V, 1807, § XX, XXI. Penalties to which the landholders and farmers of land, in the Bareilly and Benares divisions, are liable, for not giving their assistance to the police officers, in maintaining the peace, and apprehending disturbers of it. Applicable also to officers of government employed in the collection of the public revenue, or the rents of estates held khas; or under attachment.

B. R. II, 1797, § II, III.
C. P. R. XXXV, 1803, § III. Extended, with addition, to

conquered provinces by R. VIII. 1806, § XIV. C. 8. Duties to be performed by landholders and farmers, with assistance of their village watchmen.

their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who may be found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend, or whom the police officers may require their aid to apprehend, in execution of the duties vested in them."

Penalty for wilful neglect in the performance of such duties.

C. P. R. VIII, 1806, § XIV, C. 8. As well as for being concerned, directly or indirectly, in any theft or robbery.

Secondly " ANY landholder or farmer of land, who may be convicted of wilful neglect in the instances above referred to, and particularly of neglect to afford his ready and utmost assistance on the requisition of a police officer, in apprehending persons within his estate or farm, who may have committed a breach of the peace; or who may be convicted of having been himself concerned, directly or indirectly, in any theft or robbery, committed within his estate or farm; or having been aiding or abetting therein, or privy to the same; is declared liable to the forfeiture of his estate or farm, or to such fine to government, as may be judged adequate to the circumstances of the case; and is to be proceeded against in the following manner."

Charges of wilful neglect, in the instances stated, how to be proceeded upon, by the magistrate.

Thirdly. " THE charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate, in the mode prescribed by the regulations, with respect to other charges of a criminal nature: and after hearing the defence of the party accused, with the evidence adduced against him, or in his behalf, if the magistrate shall be of opinion that the charge is not established, he is to pass judgment of acquittal; with damages to the party, if the complaint shall appear to have been groundless and litigious. If the magistrate shall consider the charge established, he is to record his opinion to this effect; with the punishment he may judge adequate to the case, whether a fine (the amount of which is to be specified.)

specified,) or a forfeiture of the offender's estate or farm (the annual jumma of which is to be in that case specified,) and to transmit without delay a copy and translation of his proceedings to the court of Nizamut Adawlut."

Fourthly. "THE Nizamut Adawlut, on receipt of the magistrate's proceedings, are to pass such order thereupon as they may think proper, on due consideration of the evidence, and all the circumstances of the case; and in all instances wherein they may order a fine to government, their judgment is to be considered final, and immediately carried into execution by the magistrate, in the same manner as other fines are levied under the existing regulations. But in case the Nizamut Adawlut shall adjudge a forfeiture of the offender's land or lease, they are, previous to ordering such judgment to be carried into execution, to transmit their proceedings, with those of the magistrate, to the Governor General in Council; who will finally determine whether the judgment of forfeiture shall be put in force, or commuted to a fine, or otherwise; and who, whenever he may order the land or lease of the offender to be forfeited to government, will at the same time cause the necessary instructions for the future disposal of the land, to be conveyed to the collector, through the Board of Revenue."

Rule for Nizamut Adawlut in such cases.

And in what instances the judgment of that court to be reported to government.

It is further provided, by Regulation XIV, 1807, that nothing therein contained shall preclude the landholders or tehsildars, in the province of Benares, and in the ceded and conquered provinces within the divisions of Bareilly and Benares, from retaining munnuds and being employed as ameens of police, under Regulation XII, 1807, hereafter mentioned. Also, that if, in any particular tehsildaries, estates, or farms, the Governor General in Council, on consideration of local, or other circumstances, should judge it expedient to postpone the introduction of the general system of police established by

R. XIV, 1807, § XVI. Landholders and tehsildars, in the Bareilly and Benares divisions, may be still employed as ameens of police under Regulation XII, 1807.

Section XVII. And general power reserved to government to postpone, in particular instances, the introduction of the system of

police established by Regulation XIV, 1807; or to authorize any partial adoption of it; or any temporary arrangement which may appear expedient.

Regulation XIV, 1807; or any part thereof; or to grant the full powers of a mofussil police darogah to the tehseeldar, landholder, or farmer; or to commit the charge of the police to any other person, as a temporary arrangement; the same may be directed by an order to the magistrate, communicated through the Nizamut Adawlut.

R. IX, 1808. Additional provisions, for securing the assistance of landholders, and farmers of land, of their under tenants and agents, and of the native officers of government, in apprehending proclaimed dokoits.

In a late regulation the following additional provisions have been enacted for securing the aid of the proprietors and farmers of land, in all the provinces, as well as of their under-tenants, and agents, and all native officers employed in the collection of the revenue or rent of land on the part of government, or the court of wards, in apprehending persons charged with crimes of a heinous and public nature; particularly of proclaimed dokoits, such as are described in this regulation. *

“ It

* The object of this regulation, as declared in the title of it, is “ the apprehension of persons concerned in the offence of gang-robbery; and especially the firdars or leaders of gangs of dokoits.” To promote the attainment of this important object, it is stated, in the preamble, to have been deemed advisable, on the one hand, to establish personal security and indemnity, together with suitable rewards for such persons, as may afford active assistance in bringing offenders of the above description to punishment; and, on the other, to prescribe adequate pains and penalties, for such persons, as possessing the means of affording assistance towards the prevention of a crime so injurious to the peace and happiness of society, shall neglect to employ them to that end. The following sections of this regulation, being connected with the subject of the preceding ones, which had been previously printed, they are here introduced in a supplementary note :

§ II. “ Whenever the magistrate of a district or city shall have certain information, that any person residing in or resorting to any place or places within the limits of his jurisdiction, has been actually concerned in the commission of the offence of dokoity or gang robbery, or that the discovery of any such person having been guilty of, or concerned in, the commission of such offences, is so essential to render his apprehension essential to the peace and tranquillity of the district, and the magistrate shall be of opinion that the ordinary process provided for the apprehension of public offenders would be ineffectual, he shall report the circumstances of the case to the Nizamut Adawlut, with his opinion and the grounds thereof, stating at the same time, the amount of the reward which he would recommend to be offered for the apprehension of the person in question.”

§ III.

" It being the duty of all classes of the community to aid in the apprehension of persons charged with the commission of public crimes and offences, all zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraje, all sudder farmers and renters of land of every description, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards,

Section XI.
All persons
required to aid
in the app
rehension of p
blic offenders
especially
proclaimed
katts.

§ III. " On the receipt of the magistrate's report, the Nizamut Adawlut will determine whether the degree of notoriety and the dangerous character of the person accused, or the aggravated nature of the offence alleged against him; be such as to warrant the measures herein prescribed for his apprehension, and for his punishment in case of contumacy. In such case, the Nizamut Adawlut is hereby empowered to authorize the offer of such reward as they may deem adequate for the apprehension of the person accused, not exceeding however, in any one instance, the sum of five hundred, without the special authority of the Governor General in Council. The Nizamut Adawlut shall at the same time direct the magistrate to issue a proclamation, to be affixed at his own cutcherry, and at the several police thanahs within his jurisdiction, and to be published by beat of drum at the towns in which they are situated."

" Whereas _____ supposed to be an inhabitant of _____, about _____ years of age, (here describe his person if it be known) by profession a _____ (or as many of these particulars can be ascertained) stands accused before the magistrate of _____, of (here specify the offence.) It is therefore hereby proclaimed, by the special orders of the court of Nizamut Adawlut, that the said _____ is required and commanded to appear before the magistrate at the cutcherry of this zillah (or city), to answer to the matter alleged against him, within the period of two months from the date hereof; in default of which, the said _____ will be deemed guilty of the crime of which he stands accused, and will in consequence be liable to be imprisoned and transported for life. It is also hereby proclaimed, that all persons whosoever are authorized and required to apprehend the said _____, wherever he may be found: and any person or persons who shall, under the authority hereby given, apprehend the said _____, and shall deliver him in safe custody, to the magistrate of this zillah (or city), or to any police darogah within the jurisdiction of this court, shall be entitled to receive the reward of rupees _____ from government. It is also hereby notified, that any person aiding or harbouring the said _____, will be personally subject, on conviction, to fine, imprisonment, and confiscation of property, under the provisions of Regulation IX, 1808."

" Fonjdarry Adawlut, the _____ 18, corresponding
with the (era current in the zillah or city)."

(Signature of the magistrate.)

§ IV.

Seal of the
Court.

wards, and generally, all persons of whatever description, are hereby required to afford every practicable assistance in the apprehension of such offenders; particularly of the notorious criminals described in this regulation, both during the period specified in the proclamation, and subsequently to that period, should they still have evaded the pursuit of justice. It is hereby at the same time declared, that if any person in his endeavours to apprehend a proclaimed offender for whose

Persons wounding, or slaying, such proclaimed offenders, when defending themselves or flying, to be deemed guilty.

§ IV. "The magistrate shall transmit copies of the proclamation issued by him, under the foregoing section, to the magistrates of any of the adjacent zillahs or cities, in which he may consider it probable that the proclaimed person may have concealed himself, that the same may be published throughout their respective jurisdictions."

§ V. "Should the person proclaimed, under this regulation, appear before the magistrate, or be apprehended within the period limited in the proclamation, the magistrate shall proceed against him as prescribed by the regulations already in force."

§ VI. "If the proclaimed person shall appear, or be apprehended, at any period after the expiration of the time limited, he shall be proceeded against in the following manner."

§ VII. "The magistrate shall take such evidence, and hold such proceedings, as he may judge necessary, for the purpose of identifying the person of the prisoner; and having established his identity, shall afford to the prisoner an opportunity of offering any plea which he may deem proper, why the sentence specified in the proclamation, directed in Section III, should not be pronounced against him, without trial; recording the names of any witnesses mentioned by the prisoner in support of his allegations. The magistrate shall then commit the prisoner to jail, and shall cause the witnesses named by him for the above purpose, as well as the persons necessary to prove the identity of the prisoner, the due publication of the proclamation prescribed by Section III, with the return made to it, and the time and manner of the prisoner's apprehension, to be in attendance, along with the prisoner, at the next ensuing session of the court of circuit; and shall at the same time lay before the court the whole of his proceedings in the case."

§ VIII. "On the prisoner's being brought before the court of circuit at such ensuing session, the judge of the circuit, before whom it may be holden, shall again afford to the prisoner an opportunity of urging his reasons why the sentence prescribed by this regulation should not be pronounced against him without trial. The judge shall also examine the witnesses who may be in attendance, under the directions contained in the preceding clause, and whose evidence may be deemed necessary to establish the identity of the prisoner, the due publication of the proclamation, with the return made to it; and the time and manner of the prisoner's apprehension. Should the judge be satisfied, from the proceedings held by him, that the prisoner has not incurred the penalties prescribed by this regulation, he shall suspend passing any

whose apprehension a reward has been offered, should wound or slay him in consequence of standing on his defence or

any sentence on the prisoner. On the contrary, if the judge should be satisfied of the identity of the prisoner, and of his contumacy in not appearing before the magistrate within the prescribed period, he shall adjudge the prisoner to be imprisoned and transported for life; forwarding the whole of the proceedings, in either case, to the Nizamut Adawlut, who will pass such sentence or orders thereupon (in conformity with this regulation) as the circumstances of the case shall appear to warrant.

§ IX. " Nothing herein contained shall preclude the Nizamut Adawlut from mitigating the sentence passed on a prisoner under this regulation, whenever that court shall see sufficient ground for so doing.

§ X. " A conviction under the above provisions shall not exempt a prisoner so convicted, from being brought to trial on any specific charge of any other crime or offence, the nature of which may be such as to render him liable to an equal or greater punishment under the regulations. Whenever a charge of this nature shall be preferred against a prisoner so convicted, whether before or subsequently to his being apprehended, or shall arise from any proceeding held against him, and there shall appear to the magistrate sufficient grounds for so doing, he shall bring the prisoner to trial on such charge, before the court of circuit, under the established rules, as far as may be practicable after the prisoner's surrender, or apprehension. The court of circuit or Nizamut Adawlut may also respectively direct, that the prisoner be brought to trial on any specific charge not being that for which he has been proclaimed, should either of these courts see grounds for doing so, from the proceedings before them."

§ X.VI. " A separate register shall be kept by the magistrates of all firdar dacoits, or other persons proclaimed under the present regulation, according to the following form:—

Date of proclamation.	Name of the person proclaimed.	Date of apprehension, surrender, or ascertained death.	Sentence by the court of circuit.	Final sentence of the Nizamut Adawlut.	Date of final sentence.

§ X.VII. " A copy of the foregoing register shall be transmitted, duly revised, on the first of each month, to the court of Nizamut Adawlut. A transcript of it shall likewise be sent all times suspended by the authority of the magistrates, in order that the public may be fully apprized of the names of proclaimed dacoits; whether the period limited for the proclamation for their surrender be past or yet unexpired."

flyng, the person so wounding or slaying the criminal, shall be deemed entirely guiltless with respect to that act; in like manner as any person pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempt to perpetrate the offence, is held guiltless if he wound or slay the criminal in endeavouring to apprehend him."

Section XII.
What persons
accountable for
communication
of intelligence
to police dar-
ogahs and mag-
istrates, respect-
ing proclaimed
dekoits.

" ALL zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraje, all sudder farmers and under-renters of land of every description, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of government, or of the court of wards, are hereby declared (in addition to the responsibility attaching to them by the existing regulations with respect to robberies in general,) especially accountable for the early and punctual communication to the magistrates and police darogahs, either publicly or secretly, as the informant may judge proper, of all intelligence which they may obtain respecting the resort of any proclaimed dekoit to any place within the limits of the estate or farm, held or managed by them; and the magistrates are hereby strictly enjoined not to divulge any secret information communicated to them on this subject, which may eventually affect the personal security of the informant."

Magistrates not
to divulge such
information, in
cases requiring
secrecy.

Section XIII.
Penalty for ne-
glect to give the
information re-
quired by the
preceding sec-
tion.

" If a magistrate shall have grounds to believe that any person, of the description of those specified in the preceding section, shall have neglected to give due information to the magistrate or the police darogah, of the resort of any proclaimed dekoit to any place within the limits of the estate or farm, held or managed by such person, the magistrate shall call upon him to answer to the charge; and if it shall appear upon a full and impartial enquiry, that the person accused has been actually guilty of the neglect ascribed to him, the magistrate

Magistrate shall sentence the offender to pay such a fine to government, and to suffer imprisonment for such a period of time, as he may deem proportioned to the offence; not exceeding however, the limitation prescribed by Section XIX, Regulation IX, 1807, viz. imprisonment for six months, and a fine of rupees 200, commutable, if not paid, to imprisonment for a further period not exceeding six months longer."

" If a magistrate shall have grounds to suspect that any person, of the description of those mentioned in the preceding sections, has afforded any actual assistance in harbouring a proclaimed dacoit, subseguently to the promulgation of the proclamation; that is, if such person shall be suspected of having afforded to the said dacoit lodging, money, grain, or other supplies; or that he has committed any other overt act, tending to aid the offender in his depredations upon the community; or to evade the pursuits of justice; or that he has received any present or nuzzer, either in money or goods, from the said offender; the magistrate shall call upon the person suspected of having so offended for his reply; and if it shall appear, upon a full and impartial enquiry, that he has been actually guilty of the serious offence ascribed to him, the magistrate, in addition to the punishment mentioned in the preceding section, shall adjudge the estate or farm, held by him (supposing him to be a sudder zemindar, talookdar or farmer) forfeited to government. Provided, however, that previously to carrying the judgment of forfeiture into execution, the magistrate shall submit his proceedings on the subject, to the court of the Nizamut Adawlut, who will confirm or annul the judgment so passed, according as they may be of opinion, that the charge has been duly established or otherwise; provided, moreover, that in the event of their confirming the judgment, the Nizamut Adawlut shall report the case to the Governor General in Council; at the same time stating their opinion, whether the forfeiture should be enforced or remitted, or commuted to a fine."

Section XIV.
Further penalty
for harbouring,
or assisting a
proclaimed da-
coit; or receiv-
ing money, or
goods, from
such.

Magistrate how
to proceed in
such cases, and
judgment to be
passed, if the
offender be a
sudder zemindar,
talookdar,
or farmer;

Subject to con-
firmation of
court of Niza-
mut Adawlut.

" SHOULD

Section XV.
What judgment
to be given: if
the offender be
a sudder land-
holder, or far-
mer of lands.

Provision in
case, the offend-
er be an officer
of government.

Should the person convicted of the offence mentioned in the preceding section, not be a proprietor or sudder farmer of land, the magistrate shall sentence him, in addition to the punishment noticed in Section XIII, of this regulation, to such further fine and imprisonment as he may deem proportioned to his offence; but previously to carrying such further judgment into effect, the magistrate shall submit his proceedings to the Nizamut Adawlut, who will finally confirm, amend, or rescind the decision, as may appear to them to be just and proper. Should the person so offending be also an officer of government, the Nizamut Adawlut will at the same time take into their consideration whether he should not be dismissed from his office: and if so, will adopt the necessary measures for that purpose under the provisions of the general regulations."

R. XII, 1807.
Extended to the
divisions of B-
hars and Ba-
zels, by Sec-
tion XVI, R.
XIV, 1807.

Reasons for ap-
pointing
members of po-
lice, in the pro-
vince of Ben-
gal, Behar, and
Orissa.

THE police establishments maintained on the part of government in several districts of Bengal, Behar, and Orissa, having been found insufficient for the purposes of their appointment, and the reasons which induced government to exonerate them from the general and exclusive charge of the police, not being applicable to the employment, in concert with the police darogahs, of such of the landholders, farmers, and other inhabitants of credit and influence, as from their qualifications and character, may be considered deserving of confidence and disposed to make a proper use of the means which they possess, in promoting the maintenance of the peace, preventing the commission of crimes, and apprehending offenders, it was deemed expedient that provision should be made for granting commissions to respectable Hindoo and Mussulman inhabitants of the several divisions, authorizing them to act as ameens of police, with certain specified powers, and under such restrictions as might guard against any abuse of the authority entrusted to them. The following rules for this purpose were accordingly enacted by Regulation XII, 1807, and were ex-

tended to the divisions of Benares and Bareilly by Section XVI, Regulation XIV, 1807.

“ COMMISSIONS may be granted to respectable Hindoo and Mofulman inhabitants of the several zillahs, in the provinces of Bengal, Behar, and Orissa, authorizing them to act as ameens of police, with the powers, and under the restrictions, specified in this regulation.”

Section II.
To what persons, and in what towns, to act as ameens of police, may be granted.

“ THE ameens of police shall be nominated by the zillah magistrates; and approved by the Governor General in Council. The magistrates are required, in every instance, to report to the Governor General in Council, through the court of Nizamut Adawlut, the information they may have obtained concerning the character and qualifications of the persons proposed by them for the trust.”

Section III.
By whom the ameens to be nominated and approved, and what report to be made of their qualifications.

“ IN the selection of persons to fill the office of police ameen, a preference shall be given to such as may be duly qualified, among the following descriptions; viz. proprietors of land, whether malgoozary or lakheraj, who have the management of their own estates; farmers of land holding their farms immediately from government; managers appointed by the court of wards for the estates of disqualified landholders; managers of joint estates on the part of the proprietors; tehseeldars or other officers collecting the rents of lands held khas, or the revenue from proprietors or farmers of small estates; responsible under-renters and creditable agents of landholders, or farmers, having the management of an entire estate; or of any considerable portion of an estate; and in towns, bazars, haats, gunges, or aurungs of sufficient extent to require a separate police ameen, any respectable inhabitant of such place, possessing property, and of acknowledged good character.”

Section IV.
To what persons a preference is to be given in the selection of police ameens.

“ THE appointment of ameens of police throughout every part

Section V.
Further const.

deration to be attended to in proposing commissions for the trust of police ameen.

part of the several zillahs not being considered indispensably requisite, and it being intended that this distinction shall be conferred upon such persons only, as may be deserving of confidence, and sincerely disposed to employ the means which they possess in promoting the maintenance of the peace, preventing the commission of crimes, and apprehending offenders, the magistrates are enjoined to pay strict attention to this consideration, and intention, in proposing commissions for the trust of police ameen, under this regulation."

Section VI.
For what period commissions to police ameen shall be considered in force.

"THE commissions of proprietors of land shall be in force no longer than they may have the management of their respective estates. The commissions of farmers, and under renters of land, shall expire with their leases; and those of managers, tehseeldars, or other public officers, or private agents, with the offices in virtue of which they may receive their commissions. Inhabitants of towns or other places, to whom commissions may be granted on account of their local residence, shall retain them only whilst they continue to reside in such places. Provided with respect to the whole of the persons specified, on representation from the magistrates, of any special reason for extending the duration of commissions, beyond the time of their expiration under this section, such extension may be granted, with the sanction of the Governor General in Council, as shall appear expedient. The Governor General in Council also reserves to himself the power of ordering, at any period, the revocation of a commission for the office of police ameen, if the continuance of it appear unnecessary or objectionable."

Section VII.
What sunnud to be granted, and by whom, to police ameen.

"WHEN the appointment of an ameen of police shall have been approved by the Governor General in Council, the zillah magistrate shall grant a sunnud under his official seal and signature, in the Persian language, and to the following effect:—
(The form of sunnud states the general duty of the ameen, as prescribed by this regulation.)

" No person receiving a sunnud, under the preceding section, shall be removable from the office of police ameen, during the time for which the sunnud is granted, without sufficient cause established to the satisfaction of the Governor General in Council. In all cases wherein the magistrate may judge it expedient to withdraw a commission granted under Section VII, before the expiration of it, he shall report the circumstances of the case, with any proceedings held by him relative thereto, for the information and orders of government, through the court of Nizamut Adawlut."

Section VIII.
Persons receiving such sunnuds, not to be removed whilst they remain in force, without the sanction of government.

Magistrate how to proceed, for withdrawing a commission, before the expiration of it.

" ALL sunnuds recalled, or expiring, shall be immediately delivered up to the zillah magistrate to be cancelled; and any person exercising the functions of a police ameen, without being duly authorized, shall, on proof to the satisfaction of the Nizamut Adawlut, be liable to such fine and imprisonment as that court may deem it equitable to adjudge, on consideration of the nature and circumstances of the case. The magistrates are to report their proceedings, in all such instances, to the Nizamut Adawlut, with their opinion respecting the amount of the fine, that should be imposed on the offender, according to the degree of his offence, and his ability to make good the penalty."

Section IX.
Sunnuds recalled, or expiring, to be delivered up.

Penalty for acting as a police ameen without authority.

And magistrates how to proceed in such cases.

" EVERY ameen of police, previously to entering upon the execution of the duties of his office, shall subscribe the following declaration before the zillah magistrate, or any person whom he may commission to receive it:

Section X.
Declaration to be subscribed by police ameens, before they act.

" I ——— appointed ameen of police, solemnly declare, that I will execute the duties of that office, to the best of my abilities, with diligence, impartiality and integrity, according to the regulations enacted, or which may be hereafter enacted, for my guidance; that I will not, directly or indirectly, receive, or knowingly allow any other person to receive, any fee,

fee, reward, or emolument whatsoever, on account of any matter relating to the exercise of my functions as police ameen, and that I will, in all respects, faithfully discharge the trust reposed in me."

Section VI.
Jurisdiction
and authority
of ameens of
police.

" AMEENS of police, duly commissioned as directed, may exercise the authority with which they are invested, in concert with the police darogah, in all places situated within the limits of the estate, mchaul, town, or other local division, for which they may be appointed; and the designation of which, with such particulars as may be requisite to define the limits of their jurisdiction, shall be specified at the foot of the sunnud granted to them. All persons who may be resident within such limits, and who are subject to the jurisdiction of the zillah magistrate, are declared amenable to the authority of an ameen of police (in like manner as to the authority of a police darogah) as far as respects the regular execution of the duty committed to him. Ameens of police are also empowered to exercise a concurrent authority, within other police jurisdictions, when the person accused, at the time of the charge being preferred against him, may be within their jurisdiction, and may be pursued into another jurisdiction."

Section XII.
C. 1. What
charges may be
received by a
police ameen.

" AMEENS of police are authorized to receive charges against all persons subject to their jurisdiction, for any crime of a heinous nature, such as murder, robbery, house breaking, theft, setting fire to a village, house or other building; or any crime involving a dangerous breach of the peace, such as a violent affray, or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender."

Section XII.
C. 2. In what
cases he may
issue process to
apprehend.

" UPON a complaint in writing being received by an ameen of police against any person or persons subject to his jurisdiction for murder, robbery, or other crime of the nature above specified,

cified, and on the complainant or any other creditable person, or persons, acquainted with the case, deposing on oath, or under a solemn obligation, to the truth of the complaint, the ameen of police shall issue a warrant, under his seal and signature, for the apprehension of the person or persons complained against; unless any special reason appear why the issue of process for apprehending the party accused should be stayed; in which case the police ameen shall immediately transmit the charge, with information of the reason for staying process thereupon, to the police darogah of the jurisdiction; for the purpose of enabling him to proceed, as directed in Section XVII, Regulation IX, 1807."

"THE warrant for apprehension, to be issued by a police ameen, shall be in the following form, and shall be directed to the officer by whom it is to be executed."—(Form omitted.)

Section XII,
C. 3. Form of
warrant to be
issued, and to
whom directed.

"THE police ameen shall, within twenty-four hours, cause the person or persons apprehended by him to be conveyed, in safe custody, to the police darogah of the jurisdiction; and shall at the same time, transmit the original complaint preferred, with a report of the measures adopted in consequence."

Section XII,
C. 4. Persons
apprehended,
when to be con-
veyed to police
darogah of the
jurisdiction,
and with what
report.

"THE police darogah, on receiving such report, with the person or persons apprehended, shall proceed in like manner as he is required to do with respect to persons apprehended by his own warrant; and shall, in all cases, transmit the report of the police ameen for the information of the zillah magistrate."

Section XII,
C. 5. Police
darogah how to
proceed in such
cases.

"AMEENS of police, and all persons acting under them, are authorized to apprehend, without a written charge, or warrant, and to convey in safe custody to the police darogah of the jurisdiction, any offender or offenders, who shall be found in the act of committing a crime, or flagrant breach

Section XIII.
What persons
may be appreh-
ended by a
police ameen
without a writ-
ten charge or
warrant.

of the peace, of the nature specified in the preceding Section; or who shall be detected with stolen goods in their possession; or against whom a general hue and cry shall have been raised; or for the apprehending of whom a proclamation shall have been published by the magistrate. In every other case, ameens of police are restricted from apprehending any person without a charge preferred against him, in writing, under the seal or signature of the complainant; and without a warrant under their own seal and signature.

Section XIV,
C. a. General
duty of police
ameens.

“ It shall be the duty of ameens of police to afford every assistance in their power, in concert with the police darogahs, and other officers of police, towards maintaining the peace of the country; preventing the commission of heinous offences; and apprehending the offenders. They shall be careful to communicate to the police darogahs all intelligence which they may receive, in any way relating to the police of the country; especially concerning robbers, vagrants, or persons of suspicious character, who may have concealed themselves, or be lurking about, without any ostensible livelihood, in their respective jurisdictions; and shall require all persons subordinate to them to be assiduous in obtaining such information. It shall also be their particular duty to see that the pykes, passbars, and other village watchmen, mentioned in Section XIII, Regulation XXII, 1793, perform the services required from them by Section XIV, of that Regulation; that they patrol, at night, the towns and villages, to which they are attached, for the purpose of preventing robberies, thefts, and other crimes; or if such be committed, that they use every endeavour to detect and seize the perpetrators.”

And particular
duty to see that
the village
watchmen per-
form the ser-
vices required
from them.

Section XIV,
C. a. Police
ameens how to
proceed on in-
formation of
any homicide,
or unnatural
death, or of
any robbery or

“ On information being received by an ameen of police of any recent homicide, or unnatural death; or of any robbery, or other violent crime, within his jurisdiction, he shall immediately communicate the same to the police darogah; who will proceed

proceed to take an inquest as required by Section IX, Regulation IV, 1797; or to make the inquiry directed by Section XVIII, of Regulation IX, 1807. The ameen of police shall, at the same time, endeavour to procure any information which may be obtainable, tending to the detection of the persons concerned in the perpetration of the crime; and if any circumstances should prevent an inquest being taken, or inquiry made, in due time, by the police darogah, and his immediate officers, as directed in the regulations above mentioned, the police ameen shall proceed to hold the inquest, or make the inquiry, in conformity thereto; and transmit his report to the police darogah for the purpose of being forwarded to the magistrate."

other violent crime, within their jurisdiction.

"Police ameens shall also give any requisite assistance to the darogahs of police in making the inquiry directed by Section XVII, Regulation IX, 1807; and on apprehending a person charged with any of the criminal offences, of which they are authorized to take cognizance, if he shall admit the charge and make a free and voluntary confession, they are empowered to take the same in the manner prescribed by the regulation above mentioned; for the purpose of discovering and apprehending any other persons concerned in the commission of the crime, or in possession of any property that may have been stolen or plundered. But no prisoner shall be detained in custody for this or any other purpose by a police ameen beyond twenty-four hours, without the most urgent necessity; of which an explanation is to be given in the report sent with the prisoner."

Section XIV, C. A. To assist darogahs in making inquiry, directed by Section XVII, Regulation IX, 1807, and how to proceed when persons apprehended by them make a free confession.

"AMEENS of police shall not take cognizance, in any way whatever, of petty offences and misdemeanors, such as abusive language, trespasses of men or cattle, and inconsiderable assaults or affrays; or offences not involving a breach of the peace, as adultery, fornication, and calumny; unless the complaint for such an offence be specially referred to them by the magistrate."

Section XV. Police ameens restricted from taking cognizance of certain offences, unless the complaint be referred to them by the magistrate.

"WHENEVER

Section XVI.
Provision for
local inquiries,
to be made by
police ameen,
under special
orders from the
magistrates.

By what rules
police ameen
to be guided in
making such in-
quiries; and,
generally in cas-
es not express-
ly provided for.

Penalty for re-
sistance to an
authorized pro-
cess, issued by
an ameen of
police.

Section XVII.
Monthly report
to be furnished
by police
ameens.

And any other
reports, or in-
formation, re-
quired by the
magistrates.

Section XVIII.
Police ameen,
and persons act-
ing under them,
declared liable
to a criminal
prosecution, or
civil action, for
corruption, ex-
tortion, appre-
hension, or any
unwarranted
act of authority.

“WHENEVER the zillah magistrate shall judge it expedient to direct an inquiry to be made by an ameen of police, relative to any complaint of a criminal nature, originating within, or contiguous to, the limits of his jurisdiction, it shall be competent to the magistrate to order the same, by a perwanah under his seal and signature; and the report made by such ameen shall, unless there be good reason for the contrary, have the same authority as the report of a darogah of police in similar cases. In making such inquiries, and generally in all points coming within the prescribed duty of a police ameen, which are not expressly provided for by this regulation, the ameen of police shall be guided by the rules in force for the guidance of the darogahs of police, as far as the same may be applicable. The declared penalties for resistance to process issued by the police darogahs shall also be considered equally applicable to an authorized process issued by an ameen of police.”

“AMEENS of police shall furnish the zillah magistrate with a monthly report of all persons apprehended by them, and sent to the police darogahs. Such reports shall contain the names of the persons apprehended, the crime charged against them, the date of their apprehension, and the date of their dispatch to the police darogah. The report shall be closed on the last day of each month, and shall be sent by the public dawk, or by such mode of conveyance as the magistrate may direct, on or before the fifth day of the succeeding month. The police ameen shall also furnish any other reports, or information, which may be required from them by the zillah magistrates.”

“If an ameen of police, or any person acting under his authority, be guilty of corruption, extortion, or oppression, or commit any unwarranted act of authority, he shall be liable to prosecution, either criminally before the magistrate and court of circuit; or for damages in the Dewanny Adawlut. But no ameen of police shall be liable to be prosecuted for want of form

form in his proceedings, or for an error in judgment. Nor shall any process whatever be issued against an ameen of police, who may be charged with corruption, extortion, or oppression, unless the magistrate, or judge, shall be previously satisfied, by sufficient evidence, that there is ground to believe the charge well founded."

But not for want of form or error in judgment.

Restraint on issue of process against them.

" ALL pykes, chokeedars, pasbans, dosauds, nigabans, and other descriptions of village watchmen, who by Section XIII, Regulation XXII, 1793, are declared subject to the orders of the police darogahs, are further hereby declared to be equally subject to the orders of ameens of police, within their respective jurisdictions, in all matters relating to the office of the latter. All persons in the employment of ameens of police, whether as public or private servants, or who may be under their authority in any other capacity, are also required to obey all legal commands given by them, in the execution of their duty as officers of police."

Section XIX.
C. 1. Village watchmen subject to orders of police ameens.

As well as all persons publicly or privately employed under them.

" CONSIDERING the descriptions of persons from whom the ameens of police are to be selected under this regulation, it is not expected that they will require any distinct establishment of public officers, at the charge of government, to enable them to perform the duties required from them. But if such establishment appear, in any instance, to be indispensably requisite, the zillah magistrate will report it through the court of Nizamut Adawlut; for the consideration of government."

Section XIX;
C. 2.
Report to be made by the magistrate if any establishment of officers at the charge of government, appear requisite.

" THE provisions in Section XVIII, Regulation XXII, 1793, for a reward of ten rupees, on account of every decoit apprehended by a police darogah, and for a commission of ten per cent on the value of all stolen or plundered property recovered by a police darogah, shall be considered equally applicable to decoits apprehended, and stolen or plundered property recovered, by a police ameen."

Section XX.
Reward for apprehending a decoit, and commission on stolen or plundered property recovered, to be paid to police ameens, as to police darogahs.

Regulation
XVIII, 1805.
Preamble.
Special rules
for the police
of the jungle
meahs.

With provision
for extending
them, at the
discretion of
government, to
other meahs.

R. XVIII,
1805, § V.
Such Meahs
excepted from
the prohibition
to the landhold-
ers against keep-
ing up police es-
tablishments.

Rules prescrib-
ed for zemindars
and mana-
gers of zemindaries.

THE police of the jungle meahs, already mentioned, which were formerly included in zillahs Beeroohoom, Burdwan, and Midnapore, but were formed into a distinct zillah under the provisions of Regulation XVIII, 1805, having been successfully entrusted to the zemindars, or managers of zemindaries, in those meahs, either jointly with, or instead of, police darogahs on the part of Government, it was deemed proper to enact, in a regulation, the rules experimentally adopted in the first instance, with the sanction of Government, for this local police; and to provide for the extension of them, in other districts, as far as might be found advisable. The prohibition to landholders from entertaining establishments of police officers is accordingly declared by Section V, of the regulation above noticed, "not to extend to any district included in the jurisdiction of the magistrate of the jungle meahs, the police of which has been, or may be, committed to the zemindar, or to the manager of a zemindary, either with, or without the co-operation of police darogahs, appointed under the provisions of Regulation XXII, 1793." It is further declared, "that the prohibition contained in Section II, Regulation XXII, 1793, shall not be deemed applicable to any landholder, or to any farmer or manager of land, whom the Governor General in Council may authorize to entertain an establishment of police officers, whether in jungle meahs, or in any other meah or district whatever.* The following are the rules prescribed for zemindars and managers of zemindaries, entrusted with

* By this provision, and by that before quoted from Section XVII, Regulation XIV, 1807, for the divisions of Bareilly and Benares, the Governor General in Council can, in all instances, adapt the local police to any circumstances, which may appear to require a special deviation from the general rules in force. And the magistrates of the above divisions, in which the necessity or expediency of such deviations may be chiefly expected, are directed by Section XVII, Regulation XIV, 1807, "to report through the courts of circuit and Nizamut Adawlut, for the information of the Governor General in Council, any instances, within their respective jurisdictions, in which they may think it advisable to adopt any special arrangement; stating fully the circumstances which require it; and the particulars of the arrangement proposed."

the charge of the police in the jungle mehals. And the Governor General in Council has referred to himself the power of extending them, in whole, or in part, to any other mehals, the police of which may be entrusted to a zemindar, or other landholder, or to a farmer, or manager of land.

Jafica, entrusted with charge of the police.

First. "ZEMINDARS, entrusted with the police, shall receive sunnuds from the magistrate, under the authority of the Governor General in Council, vesting them with the charge of the police in their respective zemindarries."

R. XVIII, 13 5, & VII. Zemindars to receive sunnuds from the magistrate.

Second. "They shall not be deprived of their sunnuds except for misconduct proved to the satisfaction of the Governor General in Council. Whenever the magistrate shall be of opinion that there is ground for removing a zemindar from the charge of the police, he shall report the same through the court of Nizamut Adawlut, for the final determination of Government, in the mode prescribed with respect to the police darogahs, by Section X, Regulation V, 1804."

And not to be deprived of them, except for misconduct.

Magistrate how to proceed in such cases.

Third. "They shall be required to maintain such establishments of pykes or other watchmen, for the maintenance of the police, within their respective zemindarries, as may be fixed by the magistrate, with the approbation of the Governor General in Council.

What establishment of watchmen is to be maintained by the zemindars.

Fourth. A list of the persons so employed, with a statement of the allowance in land, or money, received by them respectively, shall be furnished by each zemindar, and shall be deposited in the office of the magistrate. On the death or removal of any of the persons specified in such lists, the zemindar shall fill up the vacancies, but shall immediately report the same to the magistrate.

List of watchmen and statement of their allowances to be furnished to the magistrate.

Vacancies how to be supplied.

Fifth. The pykes and other watchmen, and all persons employed

Watchmen and other police

officers subject to orders of the magistrates, and be punishable for misconduct.

employed under the zemindar as police officers, shall be subject to the orders of the magistrate, and be punishable for neglect of duty or other misconduct, either by fine or imprisonment, or by removal from office, or otherwise, according to the nature of the offence, under the general regulations in force."

Village watchmen also subject to police darogahs where appointed.

"*Sixth.* In zemindaries where police darogahs may have been or may be appointed, under Regulation XXII, 1793, all village watchmen, of whatever description, shall also be subject to the orders of the police darogah, as declared in Section XIII of that regulation; and the zemindar shall in all cases, aid and support the darogah in preserving the peace, preventing the commission of crimes, and apprehending offenders."

And zemindars to support the darogah in all cases.

Zemindars to receive copies of regulations for conduct of police darogahs. And to observe the same, as far as practicable.

"*Seventh.* THE zemindars shall be furnished with copies of Regulation XXII, 1793, and any other regulations that may be enacted for the conduct of the police darogahs; and are required to observe the rules contained in them, as far as may be practicable, in the discharge of their duties as chief police officers."

To whom persons apprehended by zemindars are to be sent within twenty-four hours.

"*Eighth.* THE zemindars shall send to the nearest police darogah, or to the magistrate, or to the nearest military detachment under the command of an officer acting in support of the police, (whichever may be most convenient) all persons charged with murder, robbery, or other heinous crime, within twenty four hours after the party may have been apprehended."

Recognizances to be taken from prosecutor and witnesses.

"*Ninth.* THE zemindars shall be careful to take security (since altered to recognizances by Section XXV Regulation IX, 1807,) from prosecutors and witnesses to appear before the magistrate on a certain day, as required by Section IX, Regulation XXII, 1793."

"*Tenth.*

" Tenth. In complaints for petty assaults, or abusive language, the zemindars may take razeenamahs, as the darogahs are empowered to do, by Section XII, Regulation XXII, 1793; provided the parties shall deliver such razeenamahs within twenty-four hours after the accused may have appeared at the zemindar's cutcherry."

In what cases
razeenamahs
may be taken.

" Eleventh. The zemindars are authorized and required to apprehend all choars, and other plunderers of whatever description, within the limits of their own zemindarries, while committing a breach of the peace, or passing through their zemindarries after the commission of such an offence. They may also apprehend, without a written charge, all persons found within their zemindarries, in the act of committing any heinous crime; or with stolen goods in their possession; or against whom a general hue and cry shall have been raised; and also any notorious robbers, or thieves, or vagrants of suspicious character, as described in Section X, Regulation XXII, 1793."

Zemindars re-
quired to ap-
prehend choars,
and other plun-
derers.

What other per-
sons may be ap-
prehended
without a writ-
ten charge.

" Twelfth. No zemindar shall summon the ryots of another zemindar."

No zemindar to
summon ryots
of another.

" Thirteenth. The digwars, pykes, or other police officers of one zemindar, are not subject to the orders of another. But all being employed in the public service, for the general protection of the country, and the security of the lives and property of its inhabitants, it is expected that whenever there may be occasion for their co-operation, and especially when they may be called upon by the magistrate, or by any public officer acting on the part of the magistrate, they will jointly use their utmost endeavours to pursue and apprehend choars, as well as all other plunderers and disturbers of the peace."

Watchmen and
other police
officers of one
zemindar not
subject to or-
ders of another.
But general co-
operation ex-
pected when re-
quired.

Restrictions on
tending pykes,
or other police
officers, within
the limits of
other zemindars.

But every en-
deavour to be
used for appre-
hending choars,
or other plun-
derers, assem-
bling in, or
passing through,
any zemindars,

And informa-
tion given, if
assistance be re-
quired

Fourteenth. No zemindar shall send his pykes, or other police officers, within the limits of other zemindars, without receiving an express application from the latter for the purpose; or without a special order from the magistrate or from a public officer, duly authorized, acting for the magistrate. But whenever choars, or other plunderers, shall attempt to assemble in any zemindarry, or to pass through it, for the purpose of plundering another zemindarry, or to return through it after committing depredations, the zemindar and his police officers shall use their utmost endeavours to apprehend the offenders while in his zemindarry. Should their number or force be such as to require assistance for their apprehension, the zemindar shall send immediate information to the commanding officer of any military detachment stationed in the vicinity, or to the nearest police station; and also to the magistrate's cutcherry."

Penalties for
connivance or
wilful neglect,
in the cases sta-
ted.

Fifteenth. ANY zemindar who may be convicted of having connived at the assemblage or passage of choars or other plunderers within the limits of his zemindarry, and of not attempting to apprehend them, or giving the information required in the preceding article; or who may, in any instance, be convicted of wilful neglect in affording the assistance incumbent upon him to apprehend plunderers and prevent depredation; will be liable to punishment by fine, or imprisonment; or in a heinous case by forfeiture of his land; according to the circumstances of the case, and under the provisions of the general regulations in force. The principal and other subordinate officers of zemindars, who may be convicted of any of the offences specified, will also be liable to the same penalties.

Magistrate how
to proceed in
such cases.

Sixteenth. When the magistrate shall be of opinion, that an offence of the nature described in the preceding clause is established, he shall record his judgment to that effect, with

with the punishment he may consider adequate to the case; but previously to carrying the same into execution, shall transmit his proceedings to the court of Nizamut Adawlut, for the sentence of that court; and in cases of forfeiture, for the ultimate determination of the Governor General in Council, as provided in Clause Third, Section III, Regulation II, 1797."

Seventeenth. Any zemindars entrusted with the charge of the police, who shall appear to the magistrate to have been directly or indirectly concerned in the commission of robbery, either in, or out of, the limits of his own zemindarry, or to have aided or abetted robbers; or to have received any plundered property from them; will be liable, in common with all other landholders, in such cases, under Section III, Regulation XXII, 1793, to be prosecuted for the crime, before the court of circuit; and on conviction, in addition to the legal punishment, their lands are declared liable to confiscation, or to be sold for the purpose of making good the value of the property plundered, at the discretion of the Governor General in Council."

In what cases zemindars are liable to a criminal prosecution

And, on conviction, to a confiscation, or sale, of their lands.

Eighteenth. "The zemindars shall engage to be responsible for the amount of all property robbed, or stolen, within their respective estates; unless it shall clearly and satisfactorily appear that the robbery or theft, in which such property may have been taken, was not, in any respect, owing to their want of care to prevent it, or to a want of vigilance on the part of their police officers. Every zemindar entrusted with the charge of the police, shall, previously to receiving his fannud, execute an engagement to the above effect; and on his refusal to make good the amount of any loss sustained by robbery or theft, committed within his zemindarry, may be sued by the party injured, in the civil court of the zillah, wherein the loss shall have been sustained, for recovery of the amount: subject

Relates liability of zemindars for property robbed, or stolen.

And an engagement to his executed by them.

Under which they may be sued, for losses by robbery or theft, in civil court.

subject to the general rules in force, for the trial, and decision of civil causes."

Information and monthly reports to be sent to the magistrate.

" *Nineteenth.* The zemindars shall transmit regular information to the magistrate of all occurrences relating to the police of their zemindarries, and shall also send the monthly reports directed in Section XXI, Regulation XXII, 1793; according to a form to be furnished to them by the magistrate for that purpose."

In what language and character such communications to be made and orders issued by the magistrate.

" *Twentieth.* ALL reports, letters, and written information, shall be transmitted by the zemindars to the magistrate, and all orders and communications shall be issued by the magistrate to the zemindars, in the language and character, commonly used in their respective zemindarries."

Serberakara of disqualified landholders may be entrusted with police.

" *Twenty-first.* IN estates, the proprietors of which may be disqualified from age, sex, or other cause, the serberakar, or manager, is declared eligible for the charge of the police, with the sanction of the Governor General in Council; and, if appointed to this trust, shall receive a sunnud, execute engagements, and perform all the duties above prescribed for a zemindar entrusted with the police; under the stated provision and responsibility; or with such qualification of the latter, as the Governor General in Council may, in any instance, specially authorize and direct."

And to receive sunnuds, execute engagements, and perform duties, as zemindars.

With such qualified responsibility as government may direct.

Special rules for the police of Cuttack, and of the three pergunahs formerly dependent thereupon. R. XIII, 1805. Preamble. System of police in Cuttack, under the Marhatta government.

SPECIAL rules have also been enacted for the police of zillah Cuttack and the pergunahs of Pottisnore, Kummardichour, and Bograe, former dependencies of Cuttack, which are now included in zillah Midnapore. When this territory, ceded to the East India Company by the Rajah of Berar, in the year 1803, was under the Marhatta government, the maintenance of the peace was entrusted to certain firdar pykes, or head-watchmen, called *kandytes*, aided by inferior pykes under their

their orders, for whose support lands were assigned. The general control of these watchmen was vested in the zemindars, talookdars, and other landholders and farmers of land, within the limits of their respective estates and farms; excepting instances in which they were deprived of the charge of the police by the government; either from inability to perform the duties of it, or for misconduct, or other cause, in which case the exclusive charge of the police was usually given to the kandytes above mentioned. This system of police having been found well calculated for the prevention of crimes, and for maintaining the general tranquillity of the country, the following rules were enacted by Regulation XIII, 1805, in modification of Section VI, Regulation IV, 1804, whereby the general system of police established in Bengal, Behar and Orissa, had been extended to Cuttack; with a provision, that the zemindars, farmers, and other holders of lands, should continue to perform the same duties as heretofore, and subject to the same responsibility, for the prevention of robberies and other disorders; and for the maintenance of peace and good order within their respective limits."

Reasons for continuing it.

And rules enacted for that purpose.

R. IV, 1804, § VI.
In modification of provision first made for introduction of system of police, established in Bengal, Behar and Orissa.

" *First.* THE following rules shall be observed in the appointment of darogahs for the maintenance of the police in the zillah of Cuttack, and in the above mentioned pergunnahs of Puttaspore, Kummardichour and Bograc."

R. XIII, 1805, § IV.
Rules for appointment of police darogahs.

" *Second.* IN cases in which the zemindars, talookdars, and other landholders, have not been formally divested of the charge of the police within the limits of their respective estates, for misconduct or any other reason, either by the late Mahratta government, or by the board of commissioners for the settlement of the affairs of Cuttack; such zemindars, talookdars, and other landholders, shall continue, under the responsibility stated in Section VI, Regulation IV, 1804, in charge of the police, according to established usage within their respective estates;

In what cases the principal landholders to continue in charge of the police, and to be constituted darogahs.

And inferior landholders to be considered subordinate officers of police, under authority of darogahs.

estates; that is, the principal zemindars, talookdars, and other landholders, being proprietors of large estates, shall be constituted darogahs of police, within the limits of their respective possessions; and the inferior zemindars, talookdars, and other landholders, being proprietors of petty estates, shall be considered to be subordinate officers of police, subject to the above-mentioned responsibility, under the immediate authority of darogahs, who shall be selected and appointed for the maintenance of the police in estates or meahals of the latter description."

In what cases the kandytes, or firdar pykes, to have charge of the police.

" *Third.* In cases in which any of the zemindars, talookdars, and other landholders, have been divested of the charge of the police (as above noticed) within the limits of their respective estates; one, two, or more kandytes or firdar pykes, according to the extent of such estates, shall, in conformity to established usage, be vested with the immediate maintenance of the peace, the apprehension of public offenders, and other duties of that description, within the limits of the said estates; subject nevertheless to the control of darogahs, who shall be appointed for the superintendence of the police and the general control of the conduct of the said kandytes, and all inferior officers of police, within the limits of the authority of the said darogahs respectively."

Subject to the control of darogahs.

What salaries to be received by darogahs appointed under this section.

" *Fourth.* THE darogahs who may be appointed under Clauses Second and Third, of this Section, shall receive such salaries as the Governor General in Council may think proper to fix for their support, on a consideration of the labor and responsibility of the offices held by them."

Section V. Lands assigned for maintenance of pykes to be continued.

" CERTAIN lands having been assigned by the authority of the late government, for the maintenance of the said firdar pykes, and inferior pykes under the control of such firdars, for the support of the general police of the country, those lands shall be

be continued to the said firdar and other pykes, for the purposes to which they have been hitherto appropriated. It is to be understood however, that all officers of that description shall be considered subject to the authority of the darogahs of police, whether zemindars or others, within their respective limits; and shall be bound to conform to all legal orders, which may be issued to them by such darogahs, conformably to the powers with which the darogahs may be invested. It is further to be understood, that any firdar or other pyke will be liable to be dispossessed of his lands for any disobedience of orders, neglect of duty, undue violence, or other misconduct; provided, however, that whenever a magistrate shall be of opinion that any kandyte, or firdar pyke, ought to be dismissed from his office, or whenever the place of such officer shall become vacant from death, or any other cause, the magistrate shall report the circumstances of the case to the Nizamut Adawlut, who will pass such orders on the subject, as shall appear to them to be proper, under the general powers vested in them by Regulation V, 1804; provided likewise, that whenever any vacancy shall occur among the inferior pykes, either from dismissal, death, or otherwise, the places of such pykes shall be supplied by the firdar pyke, on declaring himself to the magistrate responsible for the conduct of the person recommended by him."

But all persons holding such land subject to authority of darogahs of police.

In what cases the pykes are liable to be dispossessed of their lands.

Magistrate may to proceed in such cases

Vacancies among inferior pykes how to be supplied.

"It shall be the duty of the darogahs of police, whether zemindars or others, under the guidance and instructions of the magistrate, to form a complete register of the firdar and other pykes, within the limits of the authority of the said darogahs respectively."

Section VI. Register of pykes to be formed by police darogahs.

"It shall further be the duty of the darogahs of police to ascertain and fix, under the orders of the magistrate, the limits of the local authority of the kandytes or firdar pykes, and of the inferior officers of police, attached to the said firdar; so that

Section VII. Limits of jurisdiction of firdar and inferior pykes to be fixed by darogahs, under orders from the magistrate.

every

every part of the province of Cuttack, whether consisting of lands paying revenue to government, or of lands exempt from the payment of revenue, may receive the protection of the subordinate officers of police, under the directions of the darogahs, and the general control of the magistrate."

Section VIII.
Landholders
and farmers of
land, not con-
stituted officers
of police, to as-
sist in preserv-
ing the peace
and apprehend-
ing offenders.

"Nothing contained in this regulation shall be construed to exempt the zemindars, talookdars, farmers, and other holders of land, although they be not formally constituted officers of police, from the duty of affording every assistance in the prevention of breaches of the peace, and in the apprehension of public offenders; who are immediately to be delivered into the custody of the nearest officers of police."

Section IX.
Landholders
suspected of
connivance at
robbery, or o-
ther public of-
fence, liable to
a criminal pro-
secution.

"ANY zemindar, talookdar, or holder of land exempt from revenue, who may be suspected of conniving at any robbery, or other public offence, will be liable to be prosecuted before the criminal courts of the country, and punished on conviction, under the general laws and regulations of the country."

Section X.
Collectors of
Cuttack and
Midnapore to
form a register
of lands assigned
for the support
of pykes.

"It shall be the duty of the collectors of Cuttack and Midnapore to form a complete register of the lands assigned for the support of the firdar and other pykes, specifying the quit rent payable to the zemindars, talookdars, and other landholders, (if according to established usage, the lands have been hitherto subject to the payment of such quit rent) and to transmit a copy of the register required to the board of revenue, to be deposited among the records of that board."

And to trans-
mit a copy to
the board of re-
venue.

Section XI.
Certain descrip-
tions of village
watchmen not
included in
foregoing rules.

"THE foregoing rules regarding the firdar and other pykes, and lands assigned for their support, are not to be considered applicable to certain doosauds, or village watchmen, entertained by the zemindars, talookdars, and other landholders, for the purpose of watching crops, guarding caravans, and other duties of that nature, which officers shall be left under the

But left under
exclusive con-

exclusive

exclusive control of the zemindars, talookdars, and other landholders, as heretofore."

trial of the landholders, as heretofore.

" ALL laws and regulations for the maintenance of the police, and for the administration of justice in criminal cases, in the province of Bengal, which have been or shall be enacted, and which shall not be inconsistent with, or repugnant to, the provisions contained in this regulation, and likewise such of the rules contained in Regulation IV, 1801, as are not either specifically or virtually rescinded by the present regulation, shall have full force and effect in the zillah of Cuttack, and in the pergunnahs of Puttessore, Kunnardichour, and Bograe, included in the zillah of Midnapore. Provided however, that no part of this regulation shall be construed, for the present, to extend to the estates of certain hill or jungle rajahs or zemindars, of which the following is a list :

Section XIII.
How far the general laws and regulations for criminal justice and police in the province of Bengal, to have force in Cuttack, and three pergunnahs annexed to zillah Midnapore. A forties continued in A. IV. 1801.

But no part of this regulation to extend to certain hill Rajahs specified.

Killah Neelgery,
Ditto Bankey,
Ditto Joorinoo,
Ditto Nerfingpore,
Ditto Augole,
Ditto Toalcherry,
Ditto Attgurh,
Ditto Kunjur.
Ditto Kindeapara,
Ditto Nealgurh,
Ditto Rampore,
Ditto Hindole,
Ditto Teegereah,
Ditto Burrumboh,
Ditto Deckenaul,
The territory of Mohurbunge.

17

* None of the regulations have been extended to the estates of the Hill Rajahs mentioned in this section. But an engagement to the following effect (recorded on the

Preamble to
Regulation
XXIII, 1793.
Police tax esta-
blished on in-
tro-uction of
new system at
the end of 1792.

It remains only to be observed, that on the resumption of the charge of the police from the landholders, in Bengal, Behar, and Orissa, and the appointment of police officers on the part of government, at the end of the year 1792, it was determined to provide for the expense of the new establishment by a charge upon the merchants, traders, and shopkeepers, residing in the several cities, bazars and gunges. Regulation XXIII, 1793, "for raising an annual fund for defraying the expense of the police establishments entertained under Regulation XXII, 1793," was accordingly enacted; and remained in force till the year 1797, when it was abolished by Regulation VI, of that year, in consideration of "difficulties experienced in determining what persons were liable to be charged with the tax, and also in fixing the amount to be assessed on the towns,

R. VI. 1797.
Preamble
Reason for
abolishing this
tax in 1797.

proceedings of the Nizamut Adawlut, under date the 4th February 1871) has been entered into by them.

ART. 1. I will forever be faithful and obedient to the Honorable East India Company.

ART. 2. I will without fail pay to the British government at three instalments, as under written, the sum of — annually, being the amount of my tribute.

ART. 3. Should any inhabitant of the territories of the British government abscond, and take refuge within the boundaries of my Rajee, I will, on his being demanded, immediately seize and send him to the presence.

ART. 4. Should any one of the Ryots of my Rajee commit any crime within the territories of the British government, I will, on demand, seize such delinquent and forward him to the presence for examination; and if I should have cause of complaint against a ryot of the British government, I will not take any authority upon myself to seize him, but will forward information to the presence, and conform to such orders as may be given.

ART. 5. Whenever any troops of the Honorable Company shall pass through my territories, I will issue orders to my ryots to use their utmost endeavours to supply the said troops with provisions &c. at proper prices; and should any one belonging to the British government, or should any other person with merchandize having an order or passport from the said government, pass through my Rajee, either by land or water, I will not on any grounds, or pretence whatever, molest or impede his progress. On the contrary, I will be cautious that his life and property shall receive no injury within my territories.

ART. 6. If at any time any Rajah or other person in the neighbourhood of my Rajee be disobedient or offer resistance to the British government, I will, when called on, without hesitation, send my troops to join those of the British government for the purpose of punishing and reducing to obedience the said offender, and these troops, agreeably to the number present will receive the customary allowance of provisions

bazars

bazars and other places respectively; and the proportion to be paid by the several contributors residing or having commercial concerns therein;" in consequence of which frauds and exactions had been committed by the assessors and native collectors, to the vexation of the contributors, as well as to the diminution of the produce of the tax. To provide for the deficiency in the public revenue occasioned by the abolition of this tax, new fees on the institution and trial of civil suits, and stamp duties on certain original deeds, and papers, or copies of them, as well as upon pleadings in the courts of judicature, and copies of papers furnished by them, or by the Board of Revenue, or collectors, custom-house rowanahs, and other papers specified in Regulation VI, 1797, were established by the provisions of that regulation. The annual produce of such fees and stamp duties however is not specifically brought to account for the charges of police: nor is there at present any distinct police fund; unless it be the produce of lands formerly appropriated to the expense of police establishments, and resumed from the landholders, in consequence of their being exonerated from the charge of the police; the revenue of which is ordered to be collected from them separately, for defraying the expense of the police, in pursuance of the Fourth Clause of Section VIII, Regulation I, 1793.* A tax however has been imposed upon the manufacture

Tees and duties established to provide for the deficiency occasioned by abolishing the police tax.

Annual produce of such fees and duties not carried separately to account as a police fund.

Produce of lands resumed from the landholders on exonerating them from the charge of the police, the only distinct police fund now subsisting.

R. I. 1793. S. VIII. c. 4.

Tax upon fermented liquors and intoxicating drugs

* The revenue of the resumed thanadaree lands is very inconsiderable. The amount in the past year of account, 1807-8, was sicca rupees 61,423 only. But the great produce of the stamp duties, in the same year, was sicca rupees 573,298; and of the abkaree, or tax upon spirits and intoxicating drugs, sicca rupees 14,91,082. The actual charge to government for the police officers to be entertained in the divisions of Barreilly and Benares, under the new system established by Regulation XIV, 1807, cannot be accurately stated at present. But the annual expense of the police establishments paid by government in the provinces of Bengal, Behar and Orissa, (exclusive of Cuttack) does not much exceed six lacks of rupees. This sum may, at first view, appear considerable: but the aggregate number of police officers maintained by it, including darogahs, jemadars and burkhanazes, or other armed men, employed as stationary guards, or in boats, is less than ten thousand, and this number cannot be deemed large, or sufficient, for the protection of the lives and property of a population,

might however be considered a fund for the police, if any distinction of the public taxes on this account were necessary.

R. VI, 1807,
§. XI.

But no such distinction appears requisite.

facture and sale of spirituous liquors, and intoxicating drugs; partly with a view to the public revenue arising therefrom; and partly to check the immediate use of such by enhancing the price to the consumer. The rules which have been enacted for these purposes, will be more properly stated in the third part of this Analysis; but it may be here remarked, that one declared object of them is "to give the magistrates a more immediate and efficient control over the conduct of the vendors; and to render the tax as much as possible conducive to the general purposes of police." The produce of this tax therefore might fairly be considered as forming part of a fund for the charges of police, if it were requisite to make any distinction in the taxes levied by government, on this account. But as the maintenance of a good police, such as may prevent the commission of crimes, or promote the discovery and apprehension of criminals when they are committed, is of essential consequence to the safety and welfare of the people, as well as to the prosperity and improvement of the country; a provision for it, from the general contributions and taxes, appears to be, at least, as exigent as any other article of public expenditure; and consequently not to require a separate fund or collection *

population, computed to be at least twenty-four millions; or for the due execution of the duties of an efficient police, within an extent of country stated by RENNELL to comprize nearly 1,50,000 square miles.

* It cannot be doubted however that the people would readily pay the actual expense of an efficient local police, if means could be devised of assessing and levying it with certainty and equality, so that each person might be charged nearly in proportion to the benefit derived by him in the security of his property; and, by knowing the exact amount, might not be exposed to the undue exactions of the persons employed to make the collection. The court of Nizamut Adawlat have long had it in contemplation to propose to government a contribution of this description, with a view to provide more efficient police establishments in particular districts where they are most required; but have been prevented by a consideration of the difficulties which attend the measure, under the known disposition of every native assessor and collector to abuse the trust committed to him, when it cannot be defined by clear and specific rules for his guidance.

SINCE

SINCE the foregoing pages were written, a regulation has been passed for the appointment of a superintendent of police. Under the general system of police which has been stated, the zillah and city magistrates, with the persons acting under them, had exclusive authority, in all matters of police, within their respective jurisdictions; except in particular cases wherein a concurrent authority is specially sanctioned. But (as observed in the preamble to the regulation in question,) it is consistent with the practice of other governments, that judicious and well-concerted measures should occasionally be adopted from the capital, in addition to the local administration of the police, for the apprehension of public offenders; and for the maintenance of general order and tranquillity throughout the country. By concentrating information obtainable from different parts of the country, in a particular office at the presidency, a successful plan of operations may be devised and executed when the efforts of the local police officers would be unavailing. Information and measures conducive to the discovery and seizure of the gangs of decoits, which still continue to infest many of the zillahs in the province of Bengal, may especially be promoted by the appointment of a superintendent of the police. A power, vested in this officer, to act in concert with the zillah and city magistrates, or independently of them, as circumstances shall direct, may also be usefully employed in the detection and apprehension of persons charged with or suspected of other public offences; and to promote this object, it is expedient, that he should be one of the justices of the peace for the presidency. The following provisions have accordingly been enacted for these purposes.

Regulation X.
1798, for the
appointment of
a superintendent
of police. ✓

Preamble.

“ IN addition to the persons holding the joint offices of justices of the peace for the city of Calcutta, and magistrates of the 24-Pergunnahs, but whose functions are, for the most part, confined to the city and its suburbs, a covenanted ser-

Section II. A
covenanted ser-
vant of the
Company to be
appointed ju-
stice of the peace
for Calcutta,
magistrate of

the 24 pergun-
nahs, and super-
intendent of
police.

vant of the Company shall be appointed to the offices of justice of the peace for the city of Calcutta; magistrate of the 24 Pergunnahs; and superintendent of police."

Section III.
By what laws
to be guided as
justice of the
peace.

"As justice of the peace, he will of course be guided by the laws in force for the execution of the duties of that office."

Section IV.
Rule for per-
formance of
duties, as ma-
gistrate of the
24 pergunnahs.

"As magistrate of the 24-pergunnahs, he shall, with the aid of two assistants, perform the duties of that office, in conformity with the regulations in force for the guidance of the zillah magistrates."

Section V.
Jurisdiction of
superintendent
of police.

"In his capacity of superintendent of police, he shall possess a concurrent jurisdiction with the several zillah and city magistrates in the divisions of Calcutta, Dacca, and Moorshedabad."

Section VI.
Process of su-
perintendent
how to be issued.

Aid to be given
by magistrates,
and persons ac-
ting under
them.

And resistance
to such process
how punisha-
ble.

"THE superintendent of police is empowered to execute his warrants and other process, in the form prescribed by the regulations, either by means of his own officers, or through the local authorities, as he may judge proper. The several zillah and city magistrates, and all persons acting under them, are required to aid and support the officers of the superintendent of police, in the execution of any warrant or other process issued by him, under his seal and signature; and resistance to any process so issued is hereby declared to be punishable, in like manner as provided by the regulations for resistance to the process of a zillah or city magistrate."

Section VII.
With whom and
in what manner
superintendent
may correspond,
upon subjects
connected with
his duty.
And what infor-
mation and assis-
tance to be fur-

"THE superintendent of police is authorized to correspond, either publicly, or secretly, with the officers of government in every department, upon subjects connected with the discharge of the duty committed to him: and all public officers are directed to furnish the superintendent with any in-
formation

formation they may possess upon such subjects; as well as generally to co-operate with him, and to afford every assistance in their power to enable him to accomplish the objects of his appointment."

noted by all
public officers

"The superintendent of police shall communicate immediately with the Governor General in Council, through the Secretary in the Judicial Department, upon all matters connected with his office; and shall act under such instructions as may, from time to time, be transmitted for his guidance by the order of government,"

Section VIII.
Superintendent
to communicate
with and act
under instruc-
tions of the
Governor Ge-
neral in Coun-
cil.

"The superintendent of police shall also be considered under the general authority of the court of Nizamut Adawlut, in all matters relative to the police; and upon any point not expressly provided for by the regulations, or by the orders of government, shall be guided by the instructions of that court."*

Section IX.
The superintendent
under the authority of the
Nizamut Adawlut
in all matters
relative to police.
And in other
cases to be guided
by instructions
of that
court.

* The summary of the Mohammudan criminal law prefixed to the Second Part of the Analysis, and the more diffuse method adopted, in citing, at length, the regulations in force for the administration of criminal justice, and the police, have extended this part beyond what was first proposed. But it is hoped that the work will not be the less useful, in consequence, to those for whom it is designed. The first and second Parts, which relate to the Judicial Department, civil and criminal, having occupied nearly six hundred pages, will form a convenient volume. The third and fourth Parts, which have more immediate reference to the Revenue Department, and, as stated in the introduction, are meant to include all objects connected with the public revenue, or the tenures and rents of land, will probably form another Volume. But as indispensable official duties restrict the preparation of it to the short intervals or vacations of court, a considerable time must elapse before it will be completed and printed.



S U P P L E M E N T

TO

FIRST PART.

SECTION I.

SINCE the first part of this Analysis was printed, the following rule (contained in Section XXXI, Regulation VIII, 1805, for the ceded and conquered provinces, and extended to the other provinces by Section XII, Regulation XI, 1806,) has been enacted for promulgating the regulations in the country languages.* "On receipt of translations of the regulations in the country languages, the zillah and city judges and magistrates shall cause the same to be publicly read in their cutcherries; and shall require the native pleaders of their respective courts to take copies of the translations of any regulations which relate, directly or indirectly, to the administration of civil justice. The judges shall also cause the copies, which

C. P. R. VIII
1805, § XXXI
R. XI, 1806,
XII.
Rule for promulgating the regulations in the country languages.

* This rule being equally connected with the administration of criminal justice, and the police, as with civil justice, it has been already cited in a note to page 478. But it was omitted to mention that under the letter and spirit of Section XXIII, Regulation XXII, 1793, (re-enacted for Benares by Section XXI, Regulation XVII, 1795, and for the ceded provinces by Section XXII, Regulation XXXV, 1803,) the police darogahs, and other principal local officers of police, are to be furnished by the magistrates with Persian and Hindoostanee translations of such of the regulations as relate to the performance of their respective duties.

Importance of a
strict observance
of this rule.

they are required to furnish to the cauzies stationed in the several towns and pergunnahs within their respective jurisdictions, to be read and published, for general information, at the cutcherries of the native commissioners, empowered to act as muniffs, and of the police darogahs, or tehseeldars in charge of the police." A strict observance of this rule will materially promote the important objects of the general legislative provisions stated in the first section of this work; and cannot therefore be too strongly recommended to the particular and constant attention of the several zillah and city magistrates, to whom the regulations are transmitted for promulgation. Under the provisions of Regulation XLI, 1793, (extended to Benares, by Section IV, Regulation I, 1795, and re-enacted for the ceded provinces by Regulation I, 1803.) "the civil and criminal courts of justice are to be guided, in their proceedings and decisions, by the regulations which may be framed and transmitted to them as therein directed." But unless the regulations, so transmitted, are published for general information, in a language known to the natives of the country, it is evident that they must, in many instances, if enforced, have the operation of retrospective laws; to the obvious and serious injury of the parties concerned.

B. R. I, 1795,
§ IV.
Rule for determining what regulations, enacted for the internal government of Bengal, are meant to be extended to the province of Benares.

By Section IV, Regulation I, 1795, which extended to the province of Benares the rules contained in Regulation XLI, 1793, "for forming into a regular code all regulations that may be enacted for the internal government of the British territories in Bengal," that no doubt might be entertained what regulations, so enacted, are meant to extend to that province, or otherwise, it was declared "that no such regulation shall be considered to extend, either wholly or in part, to the province of Benares, unless the title to the regulation, or the regulation itself, or some other regulation, shall declare the whole or part of it to extend to that province."

vince.* The particular regulations which have been enacted for, or extended to, the province of Benares, since the introduction into that province, in the year 1795, of the system of internal administration before adopted in the provinces of Bengal, Behar, and Orissa, have been already mentioned; but the provision above noticed was omitted. It is further provided by Section LXXXIX, Regulation XXII, 1795, that several rules detailed in the preceding section of that regulation, (passed from the year 1781, when the British Government first interfered in the interior administration of the province of Benares, till the abolition of the office of resident at Benares in the year 1795,) "are to continue in force, with the exception of the whole, or any part, of such rules as have been or shall be, either expressly repealed, or altered by, or may be inconsistent with, any provision or provisions, in any regulation declared to extend to the province of Benares, and printed and published in the manner prescribed in Regulation XLI, 1793."

R. XXII,
1795. §
LXXXIX.
Provision for
continuing in
force certain
rules made for
the internal ad-
ministration of
the province of
Benares, before
the introduc-
tion of the pre-
sent system, in
1795.

In a note to the first section of this Analysis (page 18) it was observed, that the regulations for the administration of justice in criminal cases, which had been enacted, conformably to the rules prescribed in Regulation I, 1803, for the provinces ceded by the *Nuwáb Vizeer*, in November 1801, had, by Regulation IX, 1804, been extended to the territories ceded by the *Peshwá*, and *Doulut Ráo Sindhceea*, in December 1803; and that it had been determined by Government to extend the remaining regulations, enacted for the provinces ceded by the *Nuwáb Vizeer*, to those ceded by the *Peshwá* and *Doulut Ráo Sindhceea*, with such local modifications as might be found necessary. This determination was carried into effect by Regulation

C. P. R. IX,
§ 91.
Regulations for
administering
criminal justice,
in the provinces
ceded by the
Nuwáb Vizeer,
extended to the
provinces ceded
by the *Peshwá*,
and *Doulut Ráo*
Sindhceea.

C. P. R. VII, §,
1805.

* This is of course done, when the preamble to a regulation declares it to be in force throughout the provinces, or territories, immediately dependent on, or subject to, the presidency of Fort William, although the province of Benares, be not specifically mentioned.

Further rule for general extension, to the provinces ceded by the *Peishwá* and *Doulat Ráo Sindhia*, of the laws and regulations established for the internal government of the provinces ceded by the *Nawab Vizier*.

Exception, by Section IV, of the city of Delhi and adjacent territory; the revenues of which were assigned to the King *Shah Álam*.

P. XII, 1806. The pergunnahs of Sonk, Sonfa, and Sahar, situated on the right bank of the river Jumna, and returned from the Rajah of Bhurtpore, in April 1805, annexed to zillah Agra.

And provision made for extending to them the regulations in force for the pergunnahs ceded and conquered provinces.

VIII, 1805 "for extending to the conquered provinces, situated within the Doab and on the right bank of the river Jumna; and to the territory ceded to the Honorable the East India Company in Bundelcund by the *Peishwa*; such of the laws and regulations, established for the internal government of the provinces ceded by the *Nawab Vizier* to the Honorable the East India Company, as have not been already extended to those territories; and for revising and amending certain parts of the said laws and regulations." But the city of Delhi, and the conquered territory situated on the right bank of the river Jumna, the revenues of which had been assigned to his Majesty *Shah Álam*, are by Section IV, of the above regulation, "declared not to be subject to any of the laws or regulations of the British Government, printed and published in the manner prescribed in Regulation I, 1803.*

The pergunnahs of Sonk, Sonfa, and Sahar, forming part of the territories situated on the right bank of the Jumna, which were ceded to the East India Company, by the treaty concluded with *Doulat Ráo Sindhia*, on the 30th December 1803, but were subsequently given up to the Rajah of Bhurtpore, having been since resumed, and become finally annexed to the Company's territories, in pursuance of a treaty concluded with the Rajah of Bhurtpore, under date the 17th April 1805, the above pergunnahs were, by Regulation XII, 1806, annexed to the jurisdiction of the zillah of Agra; and the regulations in force for the ceded and conquered provinces situated within the Doab, and on the right bank of the river Jumna, were ex-

* This was before generally mentioned in a note to page 193. The assigned territory was originally denominated zillah Paniput, in Section III, Regulation IX, 1801. But that zillah was, of course, discontinued, under the provision made by Section IV, Regulation VIII, 1805. The late King *Shah Álam*, died on the 19th November 1806; and was succeeded by his eldest surviving son, *Mirza Akber Shah*, who ascended the musnad on the same date, and assumed the title of *Akber-i Sámee*, the Second Akber.

tended to the pergunnahs abovementioned, with provisions to limit their retrospective operation beyond the 17th of April 1805.

REGULATION IV, 1804, "for the administration of justice in criminal cases in the zillah of Cuttack," has been already noticed.* By the provisions of that regulation, the rules in force for the administration of criminal justice in the provinces of Bengal and Behar, and in the part of the province of Orissa before subject to the British dominion, were made applicable (with certain modifications) to offences committed in the district of Cuttack, after its surrender to the British arms on the 14th October 1803; and it was declared by Section V, that "the Regulations hereafter enacted in the manner prescribed in Regulation XLI, 1793, for the administration of justice in criminal cases, and for the guidance of the magistrates, in the provinces of Bengal and Behar, and in the part of the province of Orissa heretofore subject to the dominion of the British government, shall be considered to extend to the zillah of Cuttack, unless it shall be otherwise specially directed in any regulation so enacted." Section XIII, Regulation XIII, 1805, contains a further provision for extending the laws and regulations in force, for the maintenance of the police and for the administration of justice in criminal cases, in the province of Bengal, to the zillah of Cuttack, and to the pergunnahs of Puttaspore, Kuminardichour, and Bograe, included in the zillah of Midnapore; with an exception to the estates of certain hill Rajahs, of whom a list has been already given.† By Section XI, Regulation XIV, 1805, "for the administration of justice in civil cases in the zillah of Cuttack," it is also declared that "the laws and regulations which now are, or which may be hereafter, established in the provinces of Bengal, and Behar, and in that part of Orissa

Bengal regulations for criminal justice extended to the district of Cuttack, by R. IV, 1804.

Further provision for the same purpose, in Section XIII, R. XIII, 1805, including three pergunnahs, annexed to zillah and ap.

R. XIV, 1805, § XI. Rule for extending laws and regulations relative to civil justice, and all matters cognizable by the civil courts, to Cuttack, and

* In Note to Page 18 and in Page 423.

† Vide page 573 and Note.

to pergunnahs
Puttapore,
Kannadichour,
and
Bogiae.

Estates of cer-
tain hill Rajahs
excepted.

Oryah language
and character
of hill Rajahs
excepted for
language and
character of
Bengal.

heretofore subject to the British Government, for the guidance of the zillah judges, of the judges of the provincial court of appeal, and of the Sudder Dewanny Adawlut, for the administration of justice in civil cases, including the regulations for the manufacture of salt, for the provision of the investment, and generally, regarding all cases and matters subject to the cognizance of the courts of civil judicature in the said provinces, which are not already extended to the zillah of Cuttack, and which are not repugnant to, or inconsistent with, any of the provisions stated, or with any of the provisions contained in Regulations XII and XIII, 1805, are to be in force in that zillah, and in the pergunnahs of Puttapore, Kannadichour and Bogiae: provided, however, that nothing herein contained shall be construed for the present to be applicable to the estates of certain hill or jungle Rajahs or zemindars, of whom a list is inserted in Section XXXVI, Regulation XII, 1805; and provided likewise, that in cases in which the Bengal language and character are directed to be used in the province of Bengal; the Oryah language and character shall be used in the zillah of Cuttack, and in the abovementioned pergunnahs." The special provisions referred to in this section, which have reference to the administration of civil justice in the zillah of Cuttack, and in the three pergunnahs annexed to zillah Midnapore, will be specified in the sequel of this supplement. Those which relate to criminal justice and the police have been included in the second part of this Analysis. And such as belong to the revenue department, being the provisions of Regulation XII, 1805, "for the settlement and collection of the public revenue in the zillah of Cuttack" will be stated in the next division of this work.

SECTION II.

THE alterations which have taken place in the number of zillah and city courts, since the first part of this Analysis was printed, have been already stated.* It will be sufficient to add, in this place, that the jurisdiction of the civil court re-established in the vicinity of Calcutta, by Regulation VII, 1806, and denominated, as heretofore, the dewanny adawlut of the 24 pergunnahs, is declared, by Section III of that regulation, to extend to the whole of the pergunnahs and mehals which are now, or may be hereafter, placed under the criminal and police jurisdiction of the magistrates of the 24 pergunnahs, and which are not situated within the limits of the town of Calcutta." It is further declared by Sections V, and VI, of the regulation above-mentioned, that "the judge of the dewanny adawlut of the twenty four pergunnahs, established under this regulation, shall possess the same powers for the administration of civil justice, as are vested by the general regulations in the judges of the other zillah dewanny adawluts; and shall perform the same duties; in the manner and under the restrictions prescribed by the rules in force; or which may be hereafter enacted in conformity with Regulation XLI, 1793. The provisions in Section II, Regulation IX, 1793, that the judges of the dewanny adawluts of the several zillahs shall hold the office of magistrate of the zillah under their respective jurisdictions, shall not however be considered applicable to the judge of the dewanny adawlut of the twenty-four pergunnahs established under this regulation; nor shall he be authorized to exercise any powers, or to perform any duties, which, under the general regulations, appertain to the office of magistrate, and not to that of civil

Alterations in the number of zillah and city courts already noticed.

Provisions in Regulation VII, 1806, respecting the civil court in the 24 pergunnahs, re-established by that regulation.

Section III. Limits of its jurisdiction.

Section V. Powers and duties of the judge.

Section VI. Not empowered to perform duties of magistrate.

* In Pages 425 and 426.

Section VIII.
Complaints
against collector
of customs at
Calcutta, and
other public of-
ficers at the pre-
sidency, which
are cognizable
by the civil
courts, to be re-
ceived and tried
by judge of the
24 pergunnahs.

judge." Section XXVI, Regulation XI, 1800, whereby it was declared that, in consequence of the abolition of the dewanny adawlut of the twenty-four pergunnahs, complaints against the collector of customs of Calcutta, or his officers, should be cognizable in the dewanny adawlut of zillah Hooghly, is re-
frinded by Section VIII, Regulation VII, 1806, in consequence of the re-establishment of a civil court in the twenty-four pergunnahs; and it is thereby declared " that all complaints against the collector of customs at Calcutta, or his public officers, or any other public officer at the presidency, which by the regulations in force are cognizable in any court of zillah Dewanny Adawlut, shall be received, tried, and determined, as prescribed in the regulations, by the judge of the dewanny Adawlut of the twenty-four pergunnahs, constituted in pursuance of the regulation now enacted."

**Alteration in
the jurisdiction
of the zillah and
city courts
made by Regu-
lation XIII,
1808.**

A MATERIAL alteration in the jurisdiction of the zillah and city courts of dewanny adawlut has been recently made by Regulation XIII, 1808, " for rendering civil causes which are appealable to the court of Sudder Dewanny Adawlut cognizable in the first instance by the provincial courts, and for authorizing the execution of decrees appealed from in certain cases." The reasons for this alteration, and for amending the former rules whereby appellants might, in all cases, stay the execution of decrees passed against them, are stated in the preamble to the above regulation in the following terms, " Under the rules in force, all causes of a civil nature, which may not be specially referred by the Governor General in Council, or by the Sudder Dewanny Adawlut, for trial in the first instance by the provincial courts, are instituted in the zillah or city courts; excepting suits for personal property not exceeding fifty rupees, which may be received by the native commissioners vested with the authority of muniffs. In all cases tried by the zillah and city judges in the first instance, an appeal from their decisions lies to the provincial courts; and if the
cause

Preamble.
Stating the rea-
son for this alter-
ation; and for
other provisions
contained in
Regulation
XIII, 1808.

cause of action exceed five thousand sicca rupees, a further appeal is open to the court of Sudder Dewanny Adawlut. In consequence of the second appeal allowed, in the cases last mentioned, considerable delay frequently occurs in the final determination upon contested claims to large estates, and other valuable property. Much injury to the rightful owners is often occasioned by such delays; and the expense to all parties is increased, without any adequate benefit. The person against whom the judgment is given, whether by a zillah, city, or provincial court, is seldom willing to abide by it, whilst he is at liberty to appeal from it. And the general option given to appellants by the existing regulations, to retain possession of property adjudged, until a final decree be passed, under security for the performance of such final decision, has been found to encourage litigious and groundless appeals, for the sole purpose of keeping possession of the property in dispute, to the prejudice of the real proprietor. To provide against this abuse, it is expedient that whenever the person, to whom land, houses, or other immovable property may be adjudged, shall be able to give the prescribed security for performing the judgment to be passed on an appeal, he should obtain immediate possession of the property adjudged to him, notwithstanding the appeal; unless special cause appear, to the satisfaction of the court of appeal, for leaving the appellant in possession, until the appeal be determined upon. And, for the reasons above stated, it is advisable that all causes, ultimately appealable to the Sudder Dewanny Adawlut, should be made originally cognizable by the provincial courts. In addition to the advantage which the parties in such causes will derive from this measure, it may be expected that it will promote the speedy decision of other suits cognizable in the zillah and city courts, by relieving the judges of a part of their duty. At the same time it will be requisite, as well for the convenience of witnesses residing at a distance from the stations of the provincial courts, as to prevent too great an accumulation of business in those

those courts, that a discretionary power should be vested in them of causing the depositions of witnesses to be taken in the zillah and city courts, or before the judge of the provincial court, who may proceed upon the half yearly circuit." The following rules have accordingly been enacted, for these purposes."

Rules enacted
by Regulation
XIII, 1808.

Section II.
Part of exist-
ing regulations,
vesting origi-
nal jurisdic-
tion in zillah
and city courts,
in regular civil
causes, of a
mount or value
exceeding 5000
rupees, rescin-
ded.

§ II. " SUCH part of the existing regulations as vests original jurisdiction in the zillah and city courts of dewanny adawlut, for the institution, trial, and decision, of regular civil suits, in which the cause of action may exceed five thousand sicca rupees, viz : for malgoozary land, the computed annual produce of which, as described in Section III, Regulation IV, 1793, and Section III, Regulation III, 1803, may exceed five thousand sicca rupees ; or for lakheraj land, the computed annual produce of which may exceed five hundred sicca rupees ; or for a house, tank, garden, or any other description of immovable property, the computed value of which may exceed five thousand sicca rupees ; or for money, effects, or other movable property, exceeding in amount or value, the sum of five thousand sicca rupees ; is hereby rescinded."

Section III.
Such causes to
be tried, in the
first instance,
by the provin-
cial courts.

§ III. " *First.* ALL regular civil suits, for an amount or value, exceeding five thousand sicca rupees, as specified in the preceding section, shall be instituted, heard, and determined in the first instance, under the general rules applicable to the institution, trial, and decision, of such causes, in the provincial court of the division, in which the land, house, or other immovable property sued for may be situated : or, in other cases, in the provincial court of the division in which the cause of action may have arisen ; or the defendant may reside as a fixed inhabitant, when the suit against him is commenced."

Petition of
plaint, institu-
tion fee, and
securities, to be

" *Second.* The petition of plaint, with the institution fee, and securities required by the regulations, in such cases, are to be delivered

delivered to the provincial court; unless upon the representation of parties, in particular instances, that it will be more convenient to them to deliver the institution fee, or requisite security, to the court of the zillah in which they reside, the provincial court shall think it proper to permit the same; in which case they shall cause notice of such permission to be issued to the zillah judge; and fix a period for compliance with it."

delivered into the provincial court.

Unless provincial court shall permit the same to be delivered in zillah court.

§ IV. "*First*. If the plaintiff in a zillah or city court shall state his cause of action as not exceeding five thousand sicca rupees, and the defendant shall, in answer, deny such statement, and allege the produce, amount, or value, to be such as to render the suit not cognizable by the zillah or city court, under this regulation; the judge of that court, previously to entering upon any investigation of the merits of the cause, shall make such inquiry as may appear necessary to ascertain whether the suit be, or be not receivable, in the zillah or city court; and shall pass an order accordingly; leaving either party, who may be dissatisfied therewith, to prefer a summary appeal therefrom, to the provincial court; whose decision shall be final upon the question, whether the suit be cognizable, or not, in the zillah or city court. But no such objection to the plaintiff's statement of the cause of action shall be received from the defendant, unless offered, in the first instance, in answer to the plaint. Nor shall **any** appeal from the order of the zillah or city judge, in such cases, be open to the provincial court, unless preferred within one month, after the order appealed from is passed; or unless sufficient reason be assigned, to the satisfaction of the provincial court, why it was not preferred within that period."

Section IV.
Disputes between parties respecting causes instituted in a zillah or city court, being cognizable or not by such court, under this regulation, by whom and under what rules to be decided.

"*Second*. The petition of appeal from the order of a zillah or city judge, declaring a suit admissible, or not admissible, in a zillah or city court, may be presented, at the option of the appellant; either to the court passing the order appealed from,

Petitions of appeal from an order passed on this subject, by a zillah or city judge, where to be presented; and at which of

city judge how
to proceed if
the same be pre-
sented to him.

or to the provincial court of the division; and in the former case the zillah or city judge shall immediately transmit the petition, with all papers and proceedings relative thereto, for the determination of the provincial court; till the receipt of which no further proceedings upon the cause shall be held in the zillah or city court."

What part of
the usual fees
to be paid on
these appeals,
and by whom.

"*Third.* No institution fee shall be demandable upon the summary appeals referred to in this section. And the provincial courts shall award to the pleaders employed therein such proportion of the established fees for pleaders, not exceeding one fourth, as may appear adequate to the service performed by them; to be paid by the party who may have misrepresented the cause of action."

Section V.
Dispute be-
tween parties
respecting any
cause, instituted
in a provincial
court, being
cognizable or
not in the first
instance by that
court, how and
under what
rules to be de-
cided.

§ V. "*First.* In suits which may be instituted in the provincial court, if the plaintiff shall state his cause of action to exceed five thousand sicca rupees, and the defendant shall, in answer, deny such statement, and allege the produce, amount, or value, to be such as to render the suit cognizable by the zillah or city court in the first instance; the provincial court shall cause such inquiry to be made as may appear necessary, to ascertain whether the suit be cognizable in the zillah, city, or provincial court, under the provisions of this regulation; and the determination of the provincial court, upon this point, shall be final. Provided, that no such objection to the plaintiff's statement of the cause of action shall be received from the defendant unless offered, in answer to the plaint, in the first instance."

If decided to
be cognizable
by a zillah or
city court; to
be instituted, *de
novo*, in such
court.

"*Second.* In the cases provided for in this section, if the provincial court determine, that the suit is cognizable in the zillah or city court, the institution fee paid by the plaintiff shall be returned to him; and he shall be left to institute his suit, *de novo*, in the zillah or city court. If any pleaders shall

shall have been employed in the provincial court, that court shall adjudge to them such proportion of the established fee, not exceeding one fourth, as they may judge adequate; to be paid by the plaintiff."

§ VI. "*Firft.* ANY regular suits of the nature specified in Section II, which may have been already instituted in any zillah or city court, and, the pleadings and evidence having been completed, may be ready for decision, shall be determined in such zillah or city court, notwithstanding the present regulation. But the proceedings and papers upon any other regular suits of the description mention in Section II, which may be depending in any zillah or city court on the promulgation of this regulation, shall be transmitted to the provincial court of the division; and the parties referred to that court, for the further prosecution and defence of the suits so removed. Provided, however, that if in any instance, upon the representation of the judge of a zillah or city court, or of a party in any cause now depending in a zillah or city court, the investigation of a suit, within the provisions of this regulation, though not completed, shall have been so far proceeded upon in the zillah or city court, as to make it desirable that judgment upon it in the first instance should be given in that court, it shall be competent to the provincial court of the division to order the same; and to the zillah or city judge to complete his proceedings, and decide upon such suit, in like manner as if this regulation had not been passed."

Section VI.
What suits, of the nature specified in Section II, now depending in the zillah and city courts, to be decided by those courts.

What to be transmitted for decision to the provincial court.

"*Second.*" IN suits removed from the zillah or city courts to the provincial courts under this section, if the institution fee have been paid by the plaintiff in the zillah or city court, no additional institution fee shall be levied in the provincial court. And if any pleadings upon the cause have been delivered by the vakeels of the zillah or city court, the provincial court, on deciding the cause, shall make such partition of the established fee,

Rules respecting fees, in causes removed from a zillah or city court to a provincial court.

fee, between the pleaders of the two courts, as shall, in each case, appear equitable, on consideration of the duty performed by them respectively."

General rule relative to the fees of pleaders.

"Third. It is further hereby declared, in qualification of the existing rules, relative to fees of pleaders, that whenever the pleader originally entertained by a party may have commenced the pleadings, and prosecution or defence, of a suit, and from any cause, not originating in the misconduct of such pleader, another pleader shall be employed in his stead, at the decision, or other termination of the suit, it shall be competent to the court, in which the suit is decided, or otherwise terminated, to adjudge to the pleader so employed at the commencement of the suit, (or if he be dead, to his heirs or legal representatives,) such part of the established fee, as on consideration of the service performed by him, and by his successors, he may appear entitled to."

Section VII.
The provisions of this regulation not applicable to summary suits of whatever amount.

§ VII. "THE provisions in this regulation having reference only to regular suits, such as those to which the rules contained in Regulations IV, 1793, VIII, 1795, and III, 1803, are applicable, all summary suits authorized by the regulations, whether for recovering the possession of land or other property in cases of forcible dispossession under Regulations XLIX, 1793, XIV, 1795, and XXXII, 1803; or for the speedy realization of arrears of rent, under Regulations VII, 1799, V, 1800, and XXVIII, 1803; or for any other purpose in which a summary process is sanctioned by the regulations; shall be cognizable, as heretofore, in the zillah and city courts, whatever may be the produce, amount, or value, of the land, or other property, in dispute."

Section VIII.
Rules in addition to those in force, for the guidance of provincial courts with respect to

§ VIII. "THE judges of the provincial courts are already empowered by the regulations, either to examine themselves the witnesses produced before them; or to authorize their re-

gillors to take the depositions of such witnesses, in the mode prescribed by Section XVIII, Regulation V, 1793, extended to Benares by Section VI, Regulation IX, 1795, and re-enacted for the ceded provinces by Section XVIII, Regulation IV, 1808. The judges of the provincial courts are further hereby empowered to employ their assistants, or any of their principal native officers, to take the depositions of witnesses, whom they may not have time to examine viva voce themselves; in like manner as the judges of the zillah and city courts are authorized by Clause First, Section XXI, Regulation XLIX, 1803, (re-enacted for the ceded and conquered provinces by Clause Third, Section XVII, Regulation VIII, 1805;) and under the provision therein stated."

taking depositions of witnesses.

§ IX. "WHENEVER a witness, whose evidence is required by a provincial court, may reside at such a distance from the station of the provincial court, as to render his attendance at such station inconvenient; or when, from any cause, it may be deemed improper by the provincial court to summon a witness to that court; it shall be competent to the provincial court to cause the deposition of such witness to be taken by the judge of the zillah or city in which the witness may reside. In such cases the provincial court shall instruct the zillah or city judge upon what points the witness is to be examined; and the deposition shall be taken, in open court, in the presence of the parties, or their authorized pleaders, under the general rules prescribed for the examination of witnesses in the civil courts."

Section IX.
In what cases a provincial court may cause the evidence of a witness to be taken by the judge of the zillah, or city, where he resides.

In what manner to be taken.

§ X. "In cases in which the provincial court may judge it advisable, they are likewise empowered to cause the evidence of any witness to be taken, in the prescribed form, before the judge of the provincial court, who shall next proceed upon the circuit to the zillah in which the witness may reside."

Section X.
In what cases a provincial court may cause the evidence of a witness to be taken by one of the judges of that court, when on the circuit.

§ XI. "And. SUCH part of the existing regulations, as directs

Section XI.
Modification of existing rules

rects

for staying the execution of decrees during appeals, in cases for immovable property.

rects that decrees appealed from, in cases of land, houses, or other immovable property, adjudged against the appellant, shall not be carried into execution during the appeal, provided the appellant give good and sufficient security for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, is hereby modified, as follows."

Persons suing for such property, and obtaining a decree for it, to have possession, notwithstanding an appeal, on giving prescribed security.

"*Second.* WHENEVER a person claiming the proprietary right in land, houses, or other immovable property, not in his possession, shall obtain a decree, upon investigation of the merits of the case, (whether in a zillah or city court, or in a provincial court of appeal, before which the suit may be tried in the first instance) adjudging him to be the proprietor of such land, houses, or other immovable property; he shall obtain possession thereof in execution of such decree, notwithstanding an appeal therefrom, provided he shall give good and sufficient security for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, if malgoozary land; or ten year's produce if the land be lakheraj; or the computed value, if it be a house, or immovable property of any other description."

Unless the court to which the appeal is preferred, see cause for allowing the appellant to retain possession.

"*Third.* PROVIDED however, that if the court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession during the appeal, it shall be competent to that court to order the same; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent."

Provision for cases of non-payment of revenue of disputed lands during an appeal.

"*Fourth.* PROVIDED further, that whether the appellant or respondent be left in possession of lands paying revenue to government, during an appeal, if the party in possession of such lands shall neglect to pay the revenue due upon the assessment; and a public sale shall in consequence be ordered to take place;

the

the party not in possession, by payment of the revenue due, and giving the prescribed security, previously to the sale, shall be put in immediate possession; and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of one per cent per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause."

" XII. " *First.* THE provisions contained in the preceding section not being applicable to the execution of decrees for money, or other movable property; such decrees shall be stayed, or enforced, in cases of appeal, according to the rules now established, with the following addition thereto."

Section XII.
Present rules
for staying the
execution of
decrees during
appeal, in cases
for move-
able property,
to remain in
force, with fol-
lowing addi-
tion.

" *Second.* THE security to be given by appellants for staying the execution of decrees appealed from, in cases of money, or other movable property, or by respondents, when such decrees are carried into execution during an appeal, shall be sufficient, in addition to the amount or value adjudged, to cover the interest that may be expected to arise upon the amount payable under the decree, if confirmed in appeal, according to the provision for adjudging interest in such cases, made by Section III, Regulation XIII, 1796, and Section XXXV, Regulation IV, 1803."

What security
to be given by
appellants in
such cases.

§. XIII. THE judges of the several courts, by which security may be taken from appellants or respondents, for performing the decrees to be passed on appeals, are enjoined to be particularly careful in ascertaining that the security received is good and sufficient; and they are required, in all cases, to cause the nazir or other officer, by whom the property of the sureties may be ascertained, to deliver in as accurate a statement as can be obtained of such property; with a full report of the inquiry made respecting it; informing him, at

Section XIII.
Judges taking
security on calls
of appeal, to
be careful that
it be good and
sufficient.

Measures to be
adopted for this
purpose.

the same time, that he will be held responsible for any wilful misrepresentation in his statement or report." *

Limitations of time established for cognizance of civil actions in the territories to which the regulations have been lately extended.

Periods fixed by Section VI, Regulation VIII, 1805, for the territories ceded by the Peshwá, and Doulut Káó Sendheea.

By Section IV, Regulation XII, 1806, for pergunnahs Sonk, Sonsa, and Sahar.

And by Section V, Regulation

In extending to the territories ceded by the Peshwá, and Doulut Ráo Sendheea, the laws and regulations for the administration of civil justice which had been established in the provinces ceded by the Nuwáb Vizeer, (as stated in the preceding section,) it was provided by Clause Second of Section VI, Regulation VIII, 1805, that "in lieu of the date prescribed by Section XVIII, Regulation II, 1803, the 30th of December 1803, in the provinces constituting the zillah of Allyghur, the northern and southern divisions of the zillah of Saharunpore, and the zillah of Agra; and the 16th of December 1803, in the territory constituting the zillah of Bundelcund; (being the dates on which the said provinces and territories were respectively ceded to the Honorable the English East India Company) shall be considered the periods of limitation for taking cognizance of suits, subject to the several provisions contained in Section XVIII, Regulation II, 1803, and in Sections II and III, Regulation II, 1805." It is further provided by Section IV, Regulation XII, 1806, that the 17th April, 1805, shall be considered the period of limitation for taking cognizance of civil suits in the pergunnahs of Sonk, Sonsa, and Sahar, before noticed as annexed to the Company's territories in pursuance of a treaty concluded, on that date, with the Rajah of Bhurtpore. In the district of Cuttack, and in the

* The rule contained in the last section of this regulation was suggested by experience of the frequent insufficiency of securities accepted for staying the execution of decrees under appeal, whereby the parties who obtained a final judgment, confirming the decision before given in their favor, have, in several instances, sustained material injury. A strict observance of Section XIII, Regulation XIII, 1808, will, it may be hoped, prevent a recurrence of this serious detriment to the parties in civil suits. The provision made by Clause Third of Section VI, Regulation XIII, 1808, will also secure the pleaders in such suits, from being deprived of an equitable compensation for their services, by the caprice or unreasonable dissatisfaction of their clients; or by any adventitious circumstances, which may prevent their employment at the determination of a suit, in the prosecution or defence of which they may have previously acted.

pergunnahs

pergunnahs of Puttespore, Kummardichour, and Bograc, (annexed to the zillah of Midnapore) the courts of Adawlut are prohibited by Section V, Regulation XIV, 1805, "from hearing, trying, or determining the merits of any civil suit whatever, if the cause of action shall have arisen at a period, being twelve years antecedent to the 14th day of October 1803, the date on which the fort and town of Cuttack were surrendered to the British arms." It is also declared, by Section VI, of the same regulation, "that the powers vested in the zillah courts by the foregoing clause, to receive and try suits, in which the cause of action shall have originated prior to the 14th October 1803, are to be restricted to the trial of suits of a private nature between individuals, of which cognizance would have been taken by the courts, officers, or authorities established for the administration of justice under the government of Maha Rajah Raghoojee Bhoonslah; and that such powers are not to be considered to extend to authorizing the zillah courts to take cognizance of any civil suits, originating in acts of the Maha Rajah's government, or of his officers, or in engagements contracted by individuals with the officers of the Maha Rajah's government in their official capacities; and of which, according to the usages of their government, cognizance would not have been allowed to be taken by the persons entrusted with the exercise of judicial authority. This rule shall likewise be considered to be applicable to any suits in the zemindaries of Aul, Cojung, Puttrah, Hurrispore, Muritchpore, Bishenpore, Kunkah and Kordah, or in which the zemindars, talookdars, farmers, ryots, or other inhabitants of those mohauls, may be parties, either as plaintiffs or defendants, and of which according to the policy observed by the late Mahratta government with respect to those mohauls, cognizance would not have been taken by the judicial officers of that government." If the zillah judge entertain doubts whether any suit preferred is cognizable by him under the stated restrictions, he is required by Section VII, Regulation

XIV, 1805, for Cuttack and pergunnahs Puttespore, Kummardichour, and Bograc.

R. XIV, 1805, §. VI. Further restriction of suits cognizable in Cuttack; and the three pergunnahs above mentioned.

Section VII. Zillah judge how to proceed if it appear doubtful whether a suit is cognizable un-

der above re-
finitions.

Section VIII.
Rule of limita-
tion to be ob-
served after
twelve years
shall have elap-
sed from the
date of the con-
quest of Cut-
tack.

XIV, 1805, to report the circumstances of the case to the provincial court; "which court shall forward the same, with its opinion thereon, to the Sudder Dewanny Adawlut; and the Sudder Dewanny Adawlut shall submit the case to the Governor General in Council, and shall abide by such orders as he may pass with regard to the admission or rejection of the suit." It is further provided by Section VIII, of the regulation referred to, that "after the period of twelve years shall have elapsed from the date of the conquest of the province of Cuttack, the courts of Adawlut are prohibited from hearing, trying, or determining the merits of any civil suit, with the exception of the suits described in Sections II and III, Regulation II, 1805,* if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which the petition for the institution of such suit shall be presented to the court; unless the complainant can shew by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim, within that period, to the matter in dispute, to a court of competent jurisdiction; or person having authority, whether local or otherwise, for the time being, to hear such complaint, and to try the demand; and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he was precluded from obtaining redress; provided however, that it shall not be competent to the zillah courts, under the powers vested in them by this clause, to hear, try, or determine the merits of any civil suit whatever, if the cause of action shall have arisen previous to the 14th day of October 1803."

R. II, 1806.
For explaining
and amending
the rules of

REGULATION II, 1806, "for explaining and amending, in certain cases, the rules of process to be observed by the civil

* Vide section referred to in pages 58 to 61.

courts of judicature," contains several important provisions, enacted since the first part of this Analysis was prepared, the grounds of which are stated in the following preamble to the regulation in question.

process to be observed by the civil courts.

" By the regulations in force, for the guidance of the zillah and city courts, one uniform process is prescribed for causing the appearance of all defendants in civil suits, not being Hindoo or Mahomedan women, of rank or quality, such as, according to the custom of the country, would render it improper to compel them to appear in an open court of justice; and not coming within the description of persons excepted from the general rule, by Section X, Regulation VIII, 1795; Section II, Regulation LV, 1795; and other special clauses. The original process so prescribed is a summons on the defendant, requiring him to accompany the officer deputed to serve it; or to deliver sufficient security to appear in person or by vakeel, and answer to the complaint against him on a day appointed. In the event of the defendant's being found, and his not giving the required security, the officer charged with the summons is to take his person into custody, and bring him before the court; which is empowered to commit him to close custody until he shall give the requisite security, or perform the decree, which may be passed upon the complaint against him. For the relief of defendants in cases of undue or exaggerated demands, the judges of the zillah and city courts were authorized by Section II, Regulation III, 1802, (corresponding with Section VIII, Regulation XIV, 1803, for the ceded provinces) to fix the extent of the security to be required for the appearance of the defendant; with directions, whatever may be the claim of the plaintiff, to demand from the defendant such security, only as may appear necessary to secure his appearance during the trial of the suit. But, except in petty causes, for money or property not exceeding in amount or value the sum of ten sicca rupees (in which the native com-

Preamble to this regulation, stating the grounds of the several rules contained in it.

millioners are restricted by Section IX, Regulation XVI, 1803, and Section XVII, Regulation XLIX, 1803, from requiring security, unless they shall receive certain information that the defendant is about to abscond, (the civil courts of judicature are not empowered to dispense with the requisition of bail from defendants, in any case not specially provided for by the regulations; although in many instances the small amount of the claim, and the known property and responsibility of the defendant, render the demand of security unnecessary and vexatious. On the other hand, with an exception to the power vested in the native commissioners of attaching the personal property, (instead of confining the person) of any defendant who may not give the security required for his appearance, the civil courts are not authorized to attach the property of any defendant, until a judgment be given against him; even when the defendant, against whom a summons may issue, shall abscond, or shut himself up in any building, or retire to any place so that the process cannot be served upon him; an *ex parte* trial and decision only being provided for such cases, after proclamation in the court, and at the defendant's place of residence. A dishonest debtor therefore, by concealing himself and disposing of his property, is enabled to defraud his creditors and to defeat the ends of justice. At the same time a strict application of the existing rule of final process, in execution of decrees, (whereby the civil courts are directed to levy the amount adjudged, by the public sale of a sufficient portion, or if requisite, of the whole, of the lands, houses and effects, belonging to the party against whom the judgment is given, or if necessary both by the sale of his property and attachment of his person, without any discretion to grant relief from personal attachment, in case of insolvency,) enables rigorous creditors to exercise undue severity towards their debtors, by keeping them in confinement (at a small charge for their subsistence) when they have no means of discharging the amount payable from them. And doubts have

have been entertained whether the terms of the existing rules admit of any indulgence of time being allowed by the courts for the satisfaction of a final judgment, without the express consent of the party in whose favor such judgment is passed. Also, whether the amount paid for the subsistence of persons confined, in execution of decrees of the civil courts, is to be repaid by the party confined on his release. To explain and amend therefore the existing rules of process, in the several instances abovementioned; in such manner as appears requisite, expedient, and conclusive to justice; the Governor General in Council has enacted the following rules, to be in force, from the time of their promulgation, throughout all the provinces under the immediate government of the Presidency of Fort William." As no abstract of these rules would be sufficiently clear and intelligible for practical instruction, they are here entered at length.

Rules enacted
by Regulation
11, 1806.

§. II. *First.* Upon the institution of a civil suit in the mode prescribed by the regulations, in any zillah or city court, the general first process against the defendant, instead of the summons and requisition of security for appearance prescribed by Section V, Regulation IV, 1793, and Section V, Regulation III, 1803, shall be a notice only, containing a short statement of the demand, with a requisition to attend in person or by ~~val~~ and to deliver an answer to the plaint, on or before a certain day, to be specified in the notice."

Section II.
Notice to be issued to defendants in civil suits, in the first instance.

" *Second.* If the defendant have an accredited agent at the place where the court is held, expressly empowered, either by a clause in his general muktarnamah, or by a separate muktarnamah granted for that purpose, to receive on behalf of his constituent notices or other judicial processes, which may not be specially ordered to be served personally, by an officer of the court, the notice to be issued under the preceding clause shall be ordered to such agent, to be communicated

Notice how to be served if the defendant have an accredited agent at the place where the court is held.

ted

ted to his principal; and the agent's acknowledgement, to be endorsed upon it, shall be accepted as a sufficient service of it; if he be desirous of giving such acknowledgement in preference to the notice being served on the person of his principal by an officer of the court.

Notice how to be served if the defendant have no accredited agent on the spot; or if such agent decline to receive it for his constituent.

Provision in case the defendant be not resident within the jurisdiction of the court.

Third. If the defendant shall not have an accredited agent at the place where the court is held, or if he shall not have expressly authorized his agent to receive notices of the above description; or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the jurisdiction of the court; it shall be served on him through the nazir of the court, by a single chuprassy or peon, who shall require only the acknowledgement of the defendant to be endorsed upon it, or if he be absent from his usual place of residence, the acknowledgement of his principal agent, or of any person acting for him during his absence. If the defendant be resident within the jurisdiction of any other zillah or city court than that in which the suit may have been instituted; the notice shall be transmitted to the judge of the zillah or city, in which the defendant may reside, to be served in the manner above directed. If the defendant be neither resident within the jurisdiction of the zillah or city court in which the suit may be instituted, or of any other zillah or city court; and the suit shall notwithstanding be cognizable; either in claims to landed or other immovable property, from the property claimed being situated within the jurisdiction of the court; or in other cases from the cause of action having arisen within its jurisdiction; the notice, if the suit be for land or other immovable property, shall be served upon the defendant's agent or representative in charge of such property; and in other suits the judge shall cause notice of the claim to be conveyed to the defendant, in such manner as may appear most certain and convenient according to the circumstances of the case.

" *Fourth.* The notice issued under the preceding clauses of this section to weavers or others employed in the provision of the Company's investment, and to molungees and others employed in the manufacture of salt, shall be served in the manner directed by the existing regulations with respect to the service of summonses upon persons so employed, when sued as defendants in the civil courts."

Notice how to be served upon persons employed in providing the Company's investment; or in the manufacture of salt.

§ III. " If a defendant to whom a notice may have been issued, as directed in the preceding section, shall abscond; or is not after diligent search to be found; or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him; the judge (or the register in causes referred to him) on receiving the Nazir's return to this effect, shall issue a proclamation, as directed in similar cases when a summons cannot be served upon a defendant, by Section XI, Regulation IV, 1793, and Section XIII, Regulation III, 1803. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation; or if a defendant, who may have been served with a notice, as directed in the preceding section, shall not appear in person or by vakeel, within the time specified; or if, having appeared, he shall refuse to answer the plaint, or make other default; the court, as provided in the sections abovementioned, shall proceed to try the cause *ex parte*; and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered and entered into proof."

Section III.
Court how to proceed if the defendant, to whom a notice may have been issued, abscond; or is not to be found; or conceal himself so that the notice cannot be served upon him.

Or if a defendant, served with the notice, shall not appear in person or by vakeel; or shall refuse to answer or make other default.

§. IV. " If a defendant, after receiving the notice prescribed in Section II, shall attend in person or by vakeel, and deliver his answer to the plaint, and no reason shall subsequently appear to the court for requiring security for his appearance, during the trial of the suit; he shall be allowed to defend the cause, to its determination, without being called upon for

Section IV.
In what cases a defendant may be required to give security for his appearance.

such security. But if the judge (or register) shall be satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond, and withdraw himself from the jurisdiction of the court, he may either on the institution of the suit, or at any time whilst the suit is depending in the zillah or city court, issue process against the defendant, requiring him to give security for his appearance, as prescribed on the issue of summonses, by Section V, Regulation IV, 1793, and Section V, Regulation III, 1803; under penalty of being committed to close custody until such security be given, or the decree of the court be complied with; as provided in the abovementioned sections; or until an attachment of property shall have taken place, to secure the execution of the ultimate judgment in the cause, under the provision made by the following section of this regulation. The security bond, to be executed in such instances, shall in substance correspond with that prescribed by Section III, Regulation XI, 1797, and Section XXIX, Regulation III, 1803; and in fixing the extent of the security to be required, the judge (or register) is authorized to exercise the discretion vested in him by Section II, Regulation III, 1802; and Section VIII, Regulation XIV, 1803.

And under what penalty if the security required be not given.

What security bond to be executed in such instances.

And discretion to be exercised in fixing the extent of the security.

Section V.
In what cases malzamiy, or security for property, may be required.

§. V. "*First*. In any case if the judge (or the register in causes referred to him) be satisfied by sufficient proof, that there is ground to apprehend the defendant means to dispose of the property in his possession by any private transfer; or to cause the public sale of any disputed land, by withholding the assessment upon it; or to remove any personal property from the jurisdiction of the court, whilst the suit against him is depending; for the purpose of avoiding the execution of an eventual judgment against him; the judge (or register) is authorized to call upon the defendant for malzamiy security, in such sum as may appear sufficient to make good the ultimate judgment of the court; and in the event of such security

security not being given (within a reasonable time to be allowed for that purpose) to cause the attachment of any land, effects, or other property belonging to, or possessed by, the defendant, to the amount or value of the cause of action in the suit depending; or the attachment of which may be deemed necessary to secure the execution of the judgment to be passed in the cause."

And property attached if such security be not given.

" *Second.* THE attachment in such cases shall be made by a written order of the court, to be read and proclaimed upon the spot, and to be affixed in some conspicuous situation at the place where the property is situated; after which any private alienation of the property sequestered, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be deemed illegal and void; and any unauthorized removal of the property so attached, during such period, with a view to oppose or evade the sequestration, shall be punishable, on proof, as an act of resistance to the process of the court; according to the provisions in force concerning resistance to the process of the civil courts. In suits for landed property of considerable value; wherein it may appear necessary, for the purposes of justice, to divest the defendant from the management of the land until the suit be decided, or malikany security be given, the attachment shall be made through the collector of the district in which the land is situated; as prescribed by Section VI, Regulation V, 1798, and by Clause Ninth of Section XII, Regulation IV, 1803, in appealed cases, wherein neither the appellant nor respondent may be able to give security for staying the execution of the decree. But in other cases the attachments, which may be ordered under the present rule, shall not, without special cause, to be recorded on the proceedings of the court, remove the defendant, or his representative, from the possession or management of the land, or other property attached, until a decision be passed in the cause before the zillah or city court;

In what manner the attachment to be made in such cases.

Any private alienation of the property attached declared illegal and void.

And any unauthorized removal of property during attachment, to be punishable.

In what instances the attachment to be made through the collector of the district in which the land is situated.

In other cases, the attachment not to remove defendant, or his representative, from the possession or management of the land, or other property without special cause, to be recorded.

court; nor be understood to preclude any act of the defendant, or his representative, relative to such property, which may be consistent with the object of the attachment."

What orders to be passed, on decision of the suit relative to property attached.

How far answerable for execution of decree, if against the defendant.

In what cases all expence and loss to the defendant, from attachment, to be reimbursed to him by the plaintiff.

" *Third.* UPON the decision of the suit, the judge (or register) shall pass such further order relative to the property attached as may be just and conformable with the judgment given in the cause. If the decree be against the defendant, all right and interest possessed by him in the property attached (saving arrears of rent or revenue due from land, and any other bonâ fide claims which may be entitled to satisfaction in preference to the decree) shall be held answerable for the execution of the judgment, in the mode prescribed by the regulations. But if the plaintiff's claim be dismissed, or be not in any considerable proportion established against the defendant, all expence and loss to the defendant, which may arise from the attachment of his property in consequence of such claim, shall be reimbursed to him by the plaintiff, as part of the costs of suit."

Section VI.
Provision for speedy trial and decision of the suit, in cases of attachment.

Attachment to be taken off, at any time before decision of the cause, on delivery of sufficient malzaminj.

§ VI. "WHENEVER any property may be attached by order of a zillah or city court, under the provisions contained in the foregoing section, the trial of the cause shall be proceeded on, and brought to a conclusion, as speedily as possible, without regard to the order of time, with respect to other depending causes, in which it may have been instituted. The attachment shall also be taken off on the delivery of sufficient malzaminj security, at any time previous to the decision of the cause in the zillah or city court."

Section VII.
Preceding rules declared applicable to cases in appeal before provincial courts, or Sudder Dewanny Adawlut.

§ VII. "THE provisions contained in the two preceding sections shall be held equally applicable to the provincial courts of appeal, and Sudder Dewanny Adawlut, in all cases wherein an attachment of property, made by a zillah or city court, may be continued during the trial of an appeal before

a provincial court, or the court of Sudder Dewanny Adawlut; or in which those courts may judge it proper to order an attachment of property, in default of security being given, as required; either by the appellant or respondent in any depending appeal."

§ VIII. " WHEN personal bail, or security for money or other property, may be demandable from a party in any original civil suit, or appeal; and he shall tender a deposit of money, or of promissory notes, or other obligations of government, or any other sufficient money security, to the amount required; such deposit shall be accepted instead of hazirzaminy or malzaminy securities; and shall be carefully kept by the treasurer of the court; to be restored, or disposed of as the court may direct, on the termination of the cause, or whenever the purpose, for which the deposit is made, shall have been accomplished."

Section VIII.
A deposit of money, or of promissory notes, or other obligations of government, or other sufficient money security, to be received when tendered, instead of hazirzaminy, or malzaminy.

§ IX. " ALL native commissioners empowered to act as muniffs, aumeens, or arbitrators, shall be guided by Section II. of this regulation, directing a notice only to be issued to defendants in the first instance, without requisition of personal security, except on proof that the defendant is about to abscond. But nothing in the present regulation shall be understood to authorize any native commissioner to require personal security from defendants, or to attach their property; except in the cases wherein such authority is already declared to be vested in them, by Section XI, Regulation XL, 1798; Section IX, Regulation XVI, 1803; and Section XVII, Regulation XLIX, 1803. The judges of the zillah and city courts, and the registers of those courts, with the sanction of the judge, may however issue any of the processes authorized by this regulation, in suits referred to a native commissioner, sudder or mofussil; whenever such processes may appear necessary, and applicable to the case in reference."

Section IX.
How far the provisions in this regulation are applicable to defendants in suits before the native commissioners.

Section X.
In writ cases
the civil courts
may, or may
not, provide
for the payment
of sums ad-
judged by in-
stalments.

Restriction
when property
of the person
against whom
the judgment is
given, or his
surety, may be
forth coming.

Discretion vest-
ed in the courts,
when no prop-
erty is point-
ed out, from
which the judg-
ment can be en-
forced.

§ X. " DOUBTS having been entertained whether any of the established zillah and city courts are competent to provide, in their decrees, for the payment by instalments of money adjudged by them, or to make such provision, in cases of indigence, at any period after passing their decrees; it is hereby declared, that the civil courts in general are restricted from granting indulgence of time, in the satisfaction of a final judgment, when property, from which such judgment can be satisfied, (whether belonging to the party against whom the judgment is given, or to his surety or sureties, for the performance of such judgment) may be forthcoming; unless the party, in whose favor the decree is passed, shall consent to wave his right of immediate enforcement, under an engagement for gradual payment, or otherwise; or unless a short postponement of the sale of property shall, under any particular circumstances, appear just and equitable. But when no property may be pointed out from which the judgment can be enforced, and the party against whom it is passed, or his surety if he have given any, may be willing to engage, (under sufficient malzaminy or hazirzaminy security, as one or the other may be tendered or required) for the liquidation of the amount due, by instalments, within such period, as the court passing the final decree, or entrusted with the execution of it, shall deem reasonable and proper, it shall be competent to the court, by which the final judgment is given, or to a zillah or city court enforcing the decision of a native commissioner, and to any superior court revising the proceedings of an inferior court, to accept the engagement so offered, and to cause execution of the decree in conformity therewith, so long as the conditions of it shall be duly fulfilled. In such cases, if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately discharged; and shall not be liable to further arrest in execution of the judgment to which such engagement may refer, except on failure to perform the terms of it; nor shall any

interest

interest be chargeable in such instances beyond what may be provided for in the engagement."

§. XI. " FOR the relief of insolvent debtors and their sureties, who may be in confinement for the satisfaction of decrees of the civil courts, and may have no means of discharging the amount demandable from them, by instalments or otherwise, the judges of the zillah and city courts, the provincial courts of appeal, and the court of Sudder Dewanny Adawlut, are further empowered, on receiving from the person, or persons confined, in such cases, a statement upon oath, containing a full and fair disclosure of all property belonging to them, whether in land, money, or effects, or of whatever description; and whether held in their own names, or in the names of any other persons, or jointly with others; to cause inquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto, which may be offered by the party at whose instance the prisoner or prisoners may be in confinement; and if the result of such inquiry shall satisfy the court, that the statement of property so delivered is true and faithful, and that the persons confined possess no other means of discharging the amount demandable from them, and the property included in the statement, or such part thereof as the court may deem it proper to sell, in satisfaction of the judgment passed, shall be given up for sale; the court, on receiving such surrender of property, may cause it to be sold, in the mode prescribed by the regulations; and may order the release of the person or persons in confinement, either with or without hazirzaminny security, for his or their appearance when required. Provided, however, that nothing in this section, which is meant to grant relief in cases of real inability and fair dealing only, shall entitle any debtor or surety, confined under the judgment of a civil court, to be released, without full satisfaction of such judgment, if he shall be guilty of any fraudulent concealment of property; or shall have committed

Section XI.
Provision for
the relief of in-
solvent debtors
confined under
decrees of the
civil courts.

Restraint of
intended relief
to cases of real
inability and
fair dealing.

mitted any manifest fraud or misdemeanour, which may appear to the court to render him an improper object of the relief intended for persons acting with good faith; and willing to surrender all the property in their possession for the benefit of their creditors. Nor shall release from confinement, in any instance under this section, prevent the creditor from bringing to sale (by application to the court) in full payment of the sum adjudged due to him, any property which may be subsequently possessed by the party released; or from causing such party to be again confined until the judgment be fully satisfied, when it may appear, by sufficient proof, that he had fraudulently concealed any property actually belonging to, and known to have been possessed by him, either in his own name, or that of others in his behalf, at the time of his discharge. Provided further, that all proceedings held and orders passed, by the judges of the zillah and city courts, under the discretion vested in them by this section, shall, on representation of the parties affected thereby to the provincial courts of appeal, be open to the revision and determination of those courts; and in like manner, all orders passed by the provincial courts under this section shall be open to the final decision of the Sudder Dewanny Adawlut."

Release of debtors, under this regulation, not to prevent the sale of any property subsequently possessed by them, in full payment of sums adjudged against them.

Or their being again confined, in case of fraudulent concealment of property.

Proceedings and orders of zillah courts open to revision of the provincial courts.

And orders of provincial courts open to final decision of the Sudder Dewanny Adawlut.

Section XII. Amount paid for subsistence of persons confined in execution of civil judgments to be repaid, with other costs, when property is forthcoming.

But parties not to be detained in confinement on this account only.

§ XII. "A QUESTION having arisen whether the amount paid for the subsistence of persons in confinement, under judgments of the civil courts, as prescribed by Section VIII, Regulation IV, 1793, and Section X, Regulation III, 1803, is to be repaid by the party confined, on his release; it is hereby explained, that such repayment is to be made, in common with the reimbursement of other costs of suit and process, when any property may be forthcoming from which the amount can be levied. But when no property can be pointed out for the reimbursement of the subsistence money paid to prisoners, they shall not be detained in confinement for the repayment of such money only."

In a note to the first part of this Analysis *, it was remarked that such parts of Regulation XLIX, 1803, (for the occasional appointment of assistant judges of the zillah and city courts for altering and extending the jurisdiction of the registers of those courts; for fixing a new limitation of appeals to the provincial courts; and for amending the former rules concerning the appointment and power of native commissioners for the trial of civil suits;) as had not been previously included in the regulations for the ceded and conquered provinces, were extended to those provinces by Regulation VIII, 1805. It will now be proper to specify the provisions so extended; or rather re-enacted for the ceded and conquered provinces, in modification of the rules before stated.

By the fourth clause of Section VI, Regulation VIII, 1805, Section XXI, Regulation II, 1803, is rescinded; and it is declared, that "an appeal shall lie to the provincial courts of appeal, under the rules prescribed by Regulation IV, 1803, from the decisions of the courts of adawlut of the several zillahs in the ceded and conquered provinces, in all suits or matters whatsoever, which shall be tried by the judges of those courts in the first instance; viz. without a previous trial and decision by their registers, or by any of the native commissioners appointed under Regulation XVI, 1803." By the fifth, sixth, and seventh clauses of the above section, the same limitation is fixed for appeals to the provincial courts, in suits tried by the zillah registers, in the first instance, and determined on appeal from their decisions by the judges of the zillah courts, as was established by Section VIII, Regulation XLIX, 1803, for the provinces of Bengal, Behar, Orissa, and Benares.† In the eighth clause of the same section, it is further declared, that "In suits tried, in the first instance, by any native com-

Parts of Regulation XLIX, 1803, re-enacted for the ceded and conquered provinces, by R. VIII, 1805.

C. P. R. VIII, 1805, § VI, C. 4.
All suits tried and decided by the zillah judges, in the first instance, declared applicable to the provincial courts.

Clauses 5, 6, 7
In cases determined by the zillah judges on appeal from decisions of their registers, same standard for appeals to provincial courts fixed in ceded and conquered provinces, as in other provinces.

Clause 8.
In appeals from decisions of native commissioners, decisions of zillah judges

* Page 193.

† See pages 107 and 108.

final, as heretofore; subject to special appeal to provincial court.

missioner, appointed under Regulation XVI, 1803, and decided on appeal by the zillah judge, the decision of the latter shall be final as heretofore; provided the cause were originally cognizable by a native commissioner, under the prescribed limitations; and subject to the discretion vested in the provincial court of appeal to admit an appeal in special cases."

C. P. R. VIII, 1805, § IX, C. 1 to 5.

Provision for special appeals to provincial courts, made by Section XXIV, Regulation XLIX, 1803, extended to ceded and conquered provinces.

Clause 6. Also for appeals in all cases at default.

By Section IX, Regulation VIII, 1805, the discretionary power vested in the provincial courts by Section XXIV, Regulation XLIX, 1803, of admitting special appeals from the decisions of the zillah courts, in cases wherein a regular appeal might not lie, * which had not before been expressly extended to the ceded and conquered provinces, was declared to be in force in those provinces. The provisions contained in Section XXVI, Regulation XLIX, 1803, relative to appeals to the provincial courts, or Sudder Dewanny Adawlut, in cases of default, were also re-enacted for the ceded and conquered provinces in the sixth clause of Section IX, Regulation VIII, 1805 †

C. P. R. VIII, 1805, § XII. Rules for occasional appointment of assistant judges, extended to ceded and conquered provinces.

The rules in Sections II, III, IV, and V, Regulation XLIX, 1803, for the occasional appointment of assistant judges when requisite, ‡ were extended to the ceded and conquered provinces by Section XII, Regulation VIII, 1805. The authority

* See page 110.

† Vide page 109.

‡ The three first sections are detailed in pages 98, 99, and 100. Section V, Regulation XLIX, 1803, is noticed, with other provisions on the same subject, in pages 174 and 175. It may further be remarked in this place, that the rule therein cited from Section XV, Regulation II, 1801, whereby the judges of the provincial courts of appeal and courts of circuit are directed to apply for leave of absence from their stations, to the Governor General in Council, instead of applying, as before directed, to the courts of Sudder Dewanny Adawlut, and Nizamur Adawlut, was extended to the ceded and conquered provinces by the seventh clause of Section XIV, Regulation VIII, 1805.

vested in the zillah and city judges by Section VI, Regulation XLIX, 1803, to refer to their registers, for trial and decision in the first instance, suits for personal property not exceeding five hundred sicca rupees, or for malguzarry land, the annual produce of which may not exceed five hundred sicca rupees, or for lakheraj land, not producing above fifty sicca rupees per annum, or for other real property the computed value of which may not be above five hundred sicca rupees, was also extended to the ceded and conquered provinces by Section XVI, Regulation VIII, 1805; together with the other provision, respecting suits referrible to the registers of the zillah and city courts, in Section VI, Regulation XLIX, 1803. * Sections XX, and XXI, Regulation XLIX, 1803, whereby the judges of the zillah and city courts were empowered to employ their registers and assistants in signing and issuing any process of court not specially required to be signed by the judges, as well as to employ their registers, assistants, or principal native officers, in taking the depositions of witnesses, under certain restrictions, and to permit their registers to exercise a similar discretion in causes referred to them, were likewise re-enacted for the ceded and conquered provinces by Section XVII, Regulation VIII, 1805.†

Section XVI.
And for reference of cases not exceeding five hundred rupees, to zillah registers.

Section XVII.
Also for employing registers and assistants in signing and issuing process of court.

Or, in taking depositions of witnesses. Principal native officers may also be employed in this duty.

THE rules contained in Regulation XLIX, 1803, for the appointment of head native commissioners, with authority to try causes referred to them by the judges of the zillah and city courts, to the amount or value of one hundred sicca rupees, and for amending the former rules concerning the appointment and powers of native commissioners for the trial of suits for personal property not exceeding fifty sicca rupees, are included in Regulation XII, 1803, for the ceded provin-

Rules contained in Regulation XLIX, 1803, for appointment of head native commissioners, included in Regulation XII, 1803, for the ceded provinces.

* See the whole of these provisions in pages 88 and 89.

† The provisions of Sections XX, and XXI, Regulation XLIX, 1803, are cited partly in pages 70, 71, and partly in pages 89, 90.

Further provisions in Regulation XV, 1805.

ees; and have been already stated.* But with a view to provide for the appointment of two or more fudder ameens, or head referees, in any zillah or city, wherein the adoption of this measure might be found expedient, as well as to appoint the Mahomedan and Hindoo law officers of the zillah and city courts to be fudder ameens of the zillahs, or cities, in which they are respectively employed, (the salary received from government by such officers, with their general respectability of character, and superior knowledge, affording the strongest grounds of confidence, that the powers of referee, in such causes as the judges may deem proper to be referred to them, will be executed with integrity and impartiality) the following rules have been enacted by Regulation XV, 1805, for all the provinces immediately under the presidency of Fort William.

Section II.
Law officers of the zillah and city courts to be fudder ameens, by virtue of their offices.

§ II. "THE Mahomedan and Hindoo law officers of the zillah and city courts of civil judicature shall, by virtue of their offices, be deemed fudder ameens, or head referees, of the zillah or city, in which they may be respectively employed, for the trial and decision, in the first instance, of any suits which may be referred to them by the zillah and city judges, within the limitations prescribed by Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803."

Section III.
What provisions, in existing regulations, applicable to the law officers, in their capacity of fudder ameen.

§ III. "THE whole of the provisions contained in Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803, as far as the same can be applied to the law officers of the zillah and city courts in their capacity of fudder ameen, shall be held equally applicable to them, as to the head referees described in those sections. But under the

* With the general rules for the appointment of native commissioners. Pages

provision made by the preceding section of the present regulation, it will not be necessary to grant immunities of appointment to the law officers, in their capacity of sudder ameen, as directed with respect to the head native commissioners appointed under Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803."

§ IV. "The law officers of the zillah and city courts, in their capacity of sudder ameen, as a compensation of their trouble, and for the expense of such establishment as may be necessary for the discharge of their duty in that capacity, shall be entitled to receive the institution fee, paid in all suits decided by them upon investigation of the merits, or depending before them when adjusted by raze namahs of the parties, in the same manner, and under the same restrictions, as provided with respect to other native commissioners, by Clause Seventh, Section IV, Regulation XIII, 1803, and by Section XI, Regulation XLIX, 1803."

Section IV.
What compensation to be allowed them, for causes decided by, or adjusted before them.

§. V. "WHENEVER it may appear expedient, on consideration of the number of civil causes depending in a zillah or city court, that more than one head native commissioner should be appointed in such zillah, or city, in addition to the Mahommedan and Hindoo law officers, the court of Sudder Dewanny Adawlut are empowered to authorize the appointment of two or more sudder ameens or head referees, for the trial and decision, in the first instance, of any suits which may be referred to them by the zillah or city judge, within the limitations prescribed by Section XXVI, Regulation XVI, 1803, and Section IX, Regulation XLIX, 1803."

Section V.
Sudder Dewanny Adawlut empowered to appoint two or more sudder ameens, in addition to the law officers; whenever it may appear expedient.

REGULATION VIII; 1806, "to amend the existing rules for receiving complaints in the city and zillah civil courts, against collectors of the land revenue and customs, commercial residents, and other European public officers declared amenable to

Former rules for receiving complaints in the civil courts against collectors, commercial residents, and other European officers

amenable to those courts, amended by Regulation VIII, 1806.

And provision for a special enquiry, in certain cases of charge or information, against such officers.

those courts, for acts done in their official capacity, in opposition to any published regulation; and to make further provision for a special enquiry, in certain cases of charge, or information, against any such officers;" has been already adverted to * in stating the rules enacted by Regulation X, 1806, "for extending to the judicial department such parts of Regulation VIII, 1806, as are applicable to charges, or information, against the European public officers, employed in that department; and for making further provision in such cases." But as the former rules, declaring collectors, commercial residents, and other public officers, amenable to the civil courts, for acts done in their official capacity, in opposition to the regulations, as well as the provision made for a redress of grievances, under the regulations, by acts done in pursuance of special orders from the Governor General in Council, or from the Boards of Revenue and Trade, were stated in the First Part of this Analysis;† it is necessary to add, in this place, the amendments and further provisions made by Regulation VIII, 1806, with the grounds upon which they were founded. And this will be best done, by giving the Regulation itself, with its preamble, to the following effect.

Preamble to R. VIII, 1806.

"By Section X, Regulation III, 1793, (extended to Benares by Section VII, Regulation VII, 1795; and re-enacted for the ceded provinces by Section VII, Regulation II, 1803,) collectors of the revenue, commercial residents or agents, salt agents, collectors of the customs or other duties, the mint and assay masters, and their respective assistants, (as well as the native officers employed under them respectively) are declared amenable to the zillah or city court of dewanny adawlut in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any

* In a Note to page 461.

† In Pages 43 and 44.

acts done in their official capacity, in opposition to any regulation printed and published in the prescribed form. Similar provisions are contained in the regulations which have particular reference to the functions and duties of the several public officers specified; and to those of the opium agents. It is further provided by the regulations referred to, that if the complainant consider himself aggrieved, under any published regulation, by an act done by any of the officers described, in pursuance to a special order originating with the Governor General in Council, or with the Board of Revenue, or the Board of Trade; or, with respect to demands of revenue, if he admit the demand to be conformable to the engagements or stipulations under which the collector may have made the demand, but deny their validity, or have any objections to them, either wholly or in part, under any regulation passed by the Governor General in Council; the collector, or other public officer, is not to be liable to personal prosecution on account of such authorized act, or on account of demands made in conformity to such engagements, or stipulations, which are to be held valid until they are set aside, or altered, by a final judicial decision. In such cases government is to be considered the defendant; and the person deeming himself aggrieved is directed to present a petition to the judge of the zillah or city court, having jurisdiction over the officer by whom the act complained of may have been done, stating wherein he considers himself injured under the regulations, and praying that the Governor General in Council will order the court, in which the cause may be cognizable, to try the points or matters contested agreeably to the regulations. The judge, to whom any such petition may be presented, is required to forward it immediately to the Governor General in Council; who has declared that, if he shall not think it proper to afford the redress solicited by the petitioner, and the established courts of justice shall be competent to try the cause,

cause, he will direct the court, in which it may be cognizable, to proceed to the trial of it, under the same rules and regulations as are prescribed for the trial of suits between individuals. The officer, by whom the act complained against may have been done, is, in such cases, to defend the suit on the part of government, under the directions of the Governor General in Council, or of the Board of Revenue, or Board of Trade, (according to the authority under which he may have acted;) and he is to employ for this purpose the vakeel of government attached to the court in which the suit may be tried. But in all other cases, viz., excepting such as are specially declared to be suits against government, the officer complained against is left to defend the suit by any vakeel he may think proper to employ, and at his own ultimate risk and expense, if his conduct shall appear, on judicial investigation, to have been repugnant to, or unwarranted by, the regulations; though in suits involving any claim to money received or demanded on behalf of government, all costs of suit are allowed to be disbursed, in the first instance, from the public treasury; and the officer complained against is secured from personal loss, if his conduct shall be adjudged by a final decree to have been conformable to the regulations. A principal object of the provisions made upon this subject, in the existing regulations, was to distinguish suits, in which the collectors and other public officers might become personally answerable for any unauthorized deviation from the rules prescribed for their guidance, in the performance of their respective duties; and suits for acts done by them, under special orders, in the regular discharge of their official functions, in which no personal responsibility could attach to them. A further object was to furnish the Governor General in Council with the earliest information of all cases in which individuals might deem themselves aggrieved by acts done in pursuance of special orders from the Governor General in Council, or from the Board of Revenue, or Board of Trade; that redress might

might be granted without a judicial process, if it should appear that any real injury had been sustained; or that the rights of government might be defended, with full information and advice from the proper departments, if the complaint preferred should, on enquiry, be deemed not to have any just foundation. From omissions of the prescribed forms however, and in some instances from misapprehension of the detailed provisions of the regulations, suits have been instituted and prosecuted against the public officers, as personal actions, which ought rather to have been received and reported to government as public suits; and on the other hand, the officers complained against have sometimes regarded complaints of their official acts, which, if established, would render them personally responsible, to be within the description of suits against government, which they were not bound to defend individually. It is therefore advisable, with a view to prevent all possibility of doubt in such cases, that every complaint preferred in the courts of civil justice, against any European public officer amenable thereto, should be reported, in the first instance, for the information and orders of the Governor General in Council. It is also expedient and requisite, that provision should be made for a special inquiry, when charges of a serious nature are preferred to any of the established courts of judicature, authorized to receive such charges, against any of the covenanted servants of the Company, employed in situations of trust and responsibility, in the revenue, or commercial department; as well as when any charge or public information of this description may be communicated directly, or through any official channel of communication, to the Governor General in Council. By the Statute 13 Geo. III. Cap. LXIII, Sect. XXXIII, it is enacted, that "if any of his Majesty's subjects in India, employed by, or in the actual service of, the United Company, shall be charged with, and prosecuted for, any breach of public trust, or for embezzlement of public money, or stores, or for defrauding the United Company; every

such offender, being convicted thereof in the Supreme Court of Judicature, may be fined and imprisoned, and judged to be forever after incapable of serving the United Company." It is further enacted by the Statute 33; Geo. III, Cap. LII, Section LXII; "that the demanding or receiving any sum of money, or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the party receiving the same, or for, or pretended to be for, the use of the Company, or of any other person whatsoever, by any British subject holding or exercising any office or employment under his Majesty, or the United Company, in the East Indies, shall be deemed and taken to be extortion, and a misdemeanor at law; and shall be proceeded against and punished as such, under and by virtue of this act; and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof." These provisions of the British legislature are open to the direct prosecution of the charges therein mentioned before the Supreme Court of Judicature at Calcutta, by any individual who may be desirous of prosecuting such charges in that court, without the interposition of government. But individuals cannot be expected, in all cases, to prosecute charges of the nature specified (at their own risk and expense) in the Supreme Court at the Presidency; and when an accusation is preferred to any of the courts of judicature authorized to receive the same, or public information is given to the Governor General in Council, of corruption, embezzlement, or other gross malversation, breach of trust, or high misdemeanor, by a public officer, it is requisite for the ends of justice, that an immediate inquiry should be instituted for the purpose of ascertaining whether such accusation, or information, be founded or otherwise; in order, that in the former case, government may be enabled to judge, whether such officer deserve any longer to be continued in the employment of the Company, and that (in cases which may appear to require it) the provisions of the

the law may be carried into effect by a public prosecution in the Supreme Court of Judicature; or if the charge shall appear to be unfounded, that justice may be done to the character of the accused. The following rules are accordingly enacted by the Governor General in Council for the purposes specified; and are to be considered in force, as soon as promulgated, in the whole of the provinces subject to the immediate authority of the presidency of Fort William."

§ II. "WHENEVER a complaint may be instituted, in the manner prescribed by the regulations, in any city or zillah civil court, against a collector of the revenue, or a commercial resident or agent, or a salt or opium agent, or a collector of the customs or other duties, or a mint or assay master; or against any assistant to such officers respectively; or generally against any European public officer amenable to a zillah or city court; for any act which, under the regulations in force, may be cognizable by such court, and may not be of the nature described in Section IV, of this regulation; the judge, previously to calling upon the officer complained against for his answer, shall transmit a copy and English translation of the complainant's petition to the Governor General in Council, for his information and orders."

Section II.
First process to be observed, on the institution of a complaint, in a zillah or city court, against a collector, commercial resident, or other European public officer, amenable thereto; when the act complained of may not come within the special provisions of Section IV, of this regulation.

§ III. On receipt of the reference directed in the preceding section, the Governor General in Council, after making such inquiry as he may judge necessary, through the Board of Revenue, or Board of Trade, or in any other mode which the circumstances of the case may suggest, will determine, in the event of the redress sued for by the complainant not being granted, whether the suit instituted shall be defended, as a public suit, by government; or whether it shall be considered a private suit, and left to the defence of the person against whom it is brought; or generally what mode of proceeding shall be adopted with respect to the suit in question.

Section III.
What proceedings will be held, and orders passed, by government, on references made to the Governor General in Council, under the preceding section.

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In which respect the judges of the civil courts to be guided by the orders of government, upon such references.

The orders of government, in consequence, shall be immediately communicated to the judge of the court in which the suit may have been instituted; or in which it may be cognizable; and he shall be guided thereby, as far as they may respect the general mode of proceeding to be observed by him under the regulations in force. Provided, that if the Governor General in Council shall order the complaint, so referred, to be tried in a zillah or city court, either as a public suit against government, or as a private suit against the party whose acts are complained of, the whole of the rules in force relative to the trial and decision of such suits, respectively, shall be considered applicable to the trial and decision of the suit in question; in like manner as if no special orders from government had been received.

Section IV.
Suit process to be observed on complaints, or charges, of corruption, embezzlement, or other gross fraud, breach of trust, or high misdemeanor.

§ IV. "WHENEVER a complaint, or charge, of corruption, viz. of the corrupt demand or receipt of money, or other valuable thing, as a gift, or present, or under colour thereof, or a charge of embezzlement of public money, or stores, or of any gross fraud upon the Company, or breach of public trust, or other high misdemeanor, such as may appear to come within the provisions of the statutes quoted in the preamble to this regulation; or may be indictable as a misdemeanor in the Supreme Court of Judicature, under any other statute in force; or though not so indictable, may amount to a gross breach of duty or trust, such as, if established, would subject the party to dismissal from office; shall be preferred against any of the officers mentioned in Section II, of this regulation, in any zillah, city, or provincial court, authorized by the regulations to receive the same; or before the court of Sudder Dewanny Adawlut; the judge, or judges, of the court receiving such complaint or charge, shall transmit a copy and English translation of the petition of plaint or charge for the information and orders of the Governor General in Council."

§ V. "ON the receipt of any petition transmitted to the Governor General in Council under the preceding section, as well as in all cases, when a charge or public information, of the nature therein described, may be communicated directly to the Governor General in Council, or through the medium of the Board of Revenue, or Board of Trade, or of any other official channel of communication to government; the Governor General in Council will order such general inquiries to be made, as the nature of the case may suggest; either by a reference to the Board of Revenue, or Board of Trade, or to any of the local authorities, or (in cases in which it shall appear to be expedient) by calling upon the person accused, for an explanation of the charges exhibited against him for the purpose of ascertaining whether any grounds exist for making a more full and formal investigation into the charges."

Section V.
What proceedings will be held, and determination passed, by government, on references made to the Governor General in Council, under the foregoing section, or when a charge, or public information, of the same nature, may be otherwise communicated to the Governor General in Council.

§ VI. "WHEN it may appear necessary to cause a special inquiry to be made into any charge of the nature of those above described, the Governor General in Council will appoint a commissioner or commissioners, who, previously to entering upon the performance of the duty committed to him, or them, shall take and subscribe the following oath, before such person, or court, as the Governor General in Council may direct to administer it."

Section VI.
Commissioners to be appointed and oath to be taken by them, when a special inquiry may appear necessary.

"I, A. B. appointed a commissioner for making a special inquiry into a certain charge (or charges) exhibited against C. D. do hereby solemnly swear, that I will faithfully and impartially perform the duty committed to me, without fear, favour, or bias, to the best of my ability, knowledge, and judgment. So help me God."

§ VII. "THE Governor General in Council will, at the same time, order the commission so appointed, to be

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holden

Section VII.
Commission where to be holden.

holden at such place as may appear to be most convenient."

Section VIII.
Court of Sudder Dewanny Adawlut invested with general control over all commissions, appointed under this regulation; and empowered to instruct the commissioners, on all points, not expressly provided for by this, or any other regulation.

Provision for submitting to government any new regulation, which may appear advisable, in such cases.

§ VIII. "THE court of Sudder Dewanny Adawlut is hereby invested with a general control over the proceedings of all commissions constituted under the present regulation. The commissioners are accordingly to apply to the Sudder Dewanny Adawlut for any instructions which they may require in the execution of the duty entrusted to them, for which provision may not have been expressly made by the present, or any other regulation; and the Sudder Dewanny Adawlut is empowered to pass such orders on the subject as may appear to be most consonant to the general principles of equity, and most conducive to the purposes of substantial justice. Provided however, that if any doubt or difficulty should arise, in the conduct of such investigations, for which it may appear to the Sudder Dewanny Adawlut to be advisable to make provision by a general regulation, that court shall prepare the necessary draught of a regulation for the purpose, and submit it to the Governor General in Council for his consideration."

Section IX.
In what cases the Governor General in Council will order the suspension from office of the person charged with any of the offences specified in Section IV.

§ IX. "WHENEVER a special commission may be appointed under the provisions of this regulation, for the investigation of charges exhibited against a public officer, such officer shall be suspended from the discharge of the functions of his station, and from the receipt of the salary and allowances attached to it. But, if the charge be found, on inquiry, to have no foundation, the Governor General in Council, on restoring the suspended officer to the exercise of the functions of his station, will order payment of the whole of his salary and allowances, from the date of his suspension, in like manner as if it had never taken place."

Section X.
By whom the prosecution is to be conducted, when a

§ X. "WHENEVER a commission may be instituted under the provisions of the present regulation, for the investigation of

of charges exhibited against a public officer, the Governor General in Council will determine, whether the conduct of the prosecution shall be left to the accuser; or be undertaken on the part of government. In the latter case, it shall be the duty of the Board of Revenue, or the Board of Trade, (according as the person accused may be attached to the revenue or commercial department) to digest and prepare the charges from the papers which may be transmitted to them for that purpose by the Governor General in Council, and from any further information obtainable from the accuser, or from any other source; to bring the evidence in support of the accusation in due order before the commissioners; and generally to conduct the proceedings on the part of the prosecution, through the channel of the register of the zillah or city court, in which the commission may be assembled; whose duty it shall be, on all occasions of the above nature, to conduct the prosecution before the commissioners on the part and under the orders and guidance of the Board of Revenue, or the Board of Trade, and with the aid of the vakeel of government. The person, or persons, by whom the charges or information shall have been exhibited, may also be examined upon oath, on the part of the prosecution."

commission may be instituted, under this regulation.

Persons by whom the charges, or information, have been exhibited, may be examined on oath, for the prosecution.

§ XI. "UNDER the provisions contained in the preceding section, the person, by whom the information or accusation may have been originally lodged, will of course be at liberty to communicate in writing with the Board of Revenue, or Board of Trade; or personally with the officer appointed to conduct the prosecution on the spot; as circumstances may from time to time require."

Section XI. The person by whom the information may have been originally lodged at liberty to communicate in writing with the Board of Revenue, or Board of Trade, or personally with the officer conducting the prosecution.

§ XII. "It shall be the general duty of commissioners appointed under this regulation, after receiving the plaint or charge, and the documents from which the same may have been prepared, to call upon the person accused for his reply

Section XII. General duty of the commissioners appointed under this regulation.

to the accusation; to examine upon oath the witnesses named by the accuser, or the accused, as having knowledge of any facts relative to the charges, or defence; to receive any further written documents offered in support of, or against the accusation; and to call for and take any further requisite evidence which may be indicated by the witnesses adduced, or documents exhibited, by either party; and may appear to be necessary for the ascertainment of facts; or the discovery of the truth or falsehood of the charge; or of any part thereof."

Section XIII.
Powers vested
in a commission, constituted
under this regulation.

By whom process for attendance of witnesses, and other compulsory process, to be served and executed.

By what rules and maxims of justice, the commissioners to be guided, in questions affecting the regularity and fairness of their investigation; and in preventing delays and impediments.

Provisions of the general regulations to be observed, as far as applicable, in all points not expressly provided for by this regulation.

§ XIII. "FOR the discharge of the duties specified in the preceding section, or any other functions which may be delegated to a commission constituted under this regulation, it shall be vested with the same powers as are exercised by a court of zillah or city dewanny adawlut; except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through, and executed by, the zillah or city court, in the jurisdiction of which the commission may be held; or in which the witness, or other person upon whom the process is to be served, may reside. In the rejection of inadmissible evidence, in the exclusion of irrelevant and superfluous matter, and in other questions affecting the regularity and fairness of the investigation, as well as in preventing unnecessary delays and impediments, the commissioners are to be governed by the rules and maxims of justice; and in all points, not expressly provided for by this regulation, the provisions contained in the general regulations are to be observed, as far as they may appear consistent and applicable."

Section XIV.
The person, accused, or well as the accuser, or prosecutor, may record any requisite observations, upon the close of the evidence before the commission.

§ XIV. "ON the close of the evidence in support of the prosecution, and in defence of the accused, before the commission, it shall be at the option of the party accused to record any observations upon the result of the inquiry; which he may think necessary for the vindication of his conduct and character."

character. The accuser, or the Board of Revenue, or the Board of Trade, in cases in which the prosecution may be conducted on the part of government, shall also be at liberty to record any remarks on the subject of the prosecution which may be deemed requisite, for the information of the court of Sudder Dewanny Adawlut, and of the Governor General in Council."

§ XV. WHEN the proceedings of the commission shall have been concluded, or as soon afterwards as circumstances may admit, the commissioner or commissioners, shall transmit to the Sudder Dewanny Adawlut the whole of the proceedings held, and documents received (accompanied with translations of papers not in the English language) together with a summary of the pleadings and evidence, and his or their opinion on the merits of the case."

Section XV.
Proceedings to be transmitted, and report made, to the court of Sudder Dewanny Adawlut, when the inquiry of the commissioners is concluded.

§ XVI. "THE judges of the Sudder Dewanny Adawlut, after duly considering the proceedings and report transmitted to them under the preceding section, and after calling for any further evidence which may appear to them attainable and requisite, shall submit the whole of the proceedings and documents received by them to the Governor General in Council; with their opinion, whether any and what facts charged against the party accused, appear to have been established."

Section XVI.
Report and documents to be submitted to the Governor General in Council, by the Sudder Dewanny Adawlut, with the opinion of that court upon the proof of the facts charged.

§ XVII. "THE Governor General in Council, on consideration of the report and proceedings submitted to him, in pursuance of the foregoing section, will pass such final orders as may appear to him just and proper; and in the event of his deeming it necessary that the party accused should be brought to trial, by a public prosecution, in the Supreme Court of Judicature, will issue the necessary instructions for that purpose to the law officers of government."

Section XVII.
Final orders to be then passed by government

And when necessary, instructions will be issued to the law officers of government, for a public prosecution in the Supreme Court.

Section XVIII.
In what cases
false accusers,
or informers,
will be liable
to prosecution
for damages.

And power reserved to government, of ordering, in any particular case that may require it, the expence of the inquiry made, to be defrayed by the false accuser.

Section XIX.
General explanation of the provisions of this regulation, as not restricting public, or private, prosecutions in the Supreme Court, at all times, in the mode prescribed by law.

rounds of regulation I, 1797, "for fixing the limits to be observed, and were exercised, by single judges of the provincial courts of appeal, in the exercise of the power of the judges."

§ XVIII. "SHOULD the result of any special inquiry, instituted under the provisions of this regulation, shew the charge or information, upon which it may have been ordered, to be altogether without foundation; and more especially if it should appear to have originated in any calumnious or malicious motive; the false accuser or informer, will be liable to prosecution for damages, in any court to which he may be amenable, at the suit of the person against whom the charge or complaint may have been preferred. The Governor General in Council further reserves to himself a power of directing, in any particular case, which may appear to require it, that the expence attending the inquiry, made upon a charge, clearly shewn to be false and unfounded, and evidently known to be such by the accuser, at the time of his accusation, shall be defrayed by him, and recovered under the orders of the court of Sudder Dewanny Adawlut, by the ordinary process for enforcing a judgment of that court."

§. XIX. "NOTHING in the present regulation shall be construed to preclude the Governor General in Council from ordering a public prosecution, in the Supreme Court of Judicature, whenever it may appear to him expedient, without making the special inquiry herein provided for. Nor will any resolution or orders, which the Governor General in Council may pass under this regulation, prevent individuals from having recourse, at all times, to the Supreme Court; in the mode prescribed by law."

No provision having been made in the regulations for the ceded and conquered provinces, to define the duties which devolve upon a single judge of a provincial court of appeal remaining at the station where the court is held during the absence of the other judges, and the provisions made for this purpose in the provinces of Bengal, Behar and Orissa, by Section XII, Regulation VII, 1794. (extended to Benares by Section

tion XV, Regulation XVI, 1795;) having been found to require explanation and amendment, the following rules were enacted by Regulation I, 1807, for this purpose; as well as to provide for the case of one only of the judges of a provincial court, who may be present at the station where the court is held, being able to attend the sittings of the court from indisposition of the other judge, or judges, or from any other cause."

§ III. "WHENEVER one judge only of a provincial court of appeal may be present at the station where the court is held, or though two or more judges may be present at the station, if one judge only shall be able to attend on the days fixed for the sittings of the court, which, under the regulations now in force, are to be held three days in every week, or oftener if the business shall require it, the officiating judge, so attending the court, is authorized and directed to perform the duties specified in the following section,"

Section III.
What duties to be performed by the officiating judge of a provincial court, when one judge only can attend the sitting of the court.

§ IV. *First.* To execute all decrees, precepts and orders of the Sudder Dewanny Adawlut, and make returns in the prescribed form in all cases of reference from that court; also to receive petitions of appeal to the Sudder Dewanny Adawlut from the decisions of the provincial court, which may be duly presented within the fixed period; and to proceed thereupon as directed by the regulations.

Section IV.
Specification of duties to be so performed.

"*Secondly.* To execute all decrees and orders which may have been passed by two or more judges of the provincial court, and which shall not have been carried into full execution; provided that this authority be not construed to empower any single judge to perfect interlocutory decrees, by passing a final judgment or order upon any point left undetermined by the decision of a competent provincial court, or generally to give any determination upon the rights of parties, which may
not

not have been expressly adjudged at a regular sitting of the provincial court."

" *Thirdly.* To receive petitions of appeal from decisions of the zillah and city courts, whether transmitted by the judges of those courts, or presented, as allowed in particular cases by the regulations, immediately to the provincial court; and if the appeal shall clearly appear to be admissible under the prescribed limitations, and the petition for it shall have been duly presented within the fixed period, to admit the appeal, and issue all consequent process for the appearance of the respondent, as well as for obtaining the proceedings held upon the cause appealed. But if the petition of appeal shall not have been presented within the limited period; or, although so presented, if there appear to be any room for doubt whether the cause be regularly appealable to the provincial court, or if the petition be for a special appeal, in cases where a regular appeal is not open to the provincial court, the admission or rejection of the appeal shall be left for the consideration of a competent court; and the single judge, receiving the petition, shall merely record the receipt of it, and of the institution fee and securities required to accompany it, which shall be returned in the event of the appeals, not being ultimately allowed by the provincial court."

" *Fourthly.* To ascertain and determine the sufficiency of securities offered for the admission of appeals, or for the fees of pleaders; or for staying the execution of decrees appealed from; to summon and examine witnesses for proving vukalutnamahs, or muktarnamahs; or for establishing the property of parties; and to prepare appealed causes for trial, by receiving the pleadings of the parties, or their vakeels, and any exhibits, which may accompany them."

" *Fifthly.* To summon and examine any witnesses upon the merits

merits of the case in appeal, whom the provincial court may have previously ordered to be examined : or whose evidence may be offered upon points in which the provincial court may have resolved to admit new evidence on a previous hearing of the appeal. But this authority shall not be considered to empower any single judge to summon or examine witnesses, upon any point relative to the merits of a cause in appeal, unless two or more judges of the provincial court shall have directed the examination of such witnesses ; or have resolved to admit new evidence on the point or points, in proof of which such witnesses may be adduced."

" *Sixthly.* To proceed in causes referred for trial in the first instance to the provincial court, by the Governor General in Council, or by the Sudder Dewanny Adawlut, in like manner as stated in the foregoing clauses respecting appeals; and under the same restrictions."

" *Seventhly.* To receive miscellaneous petitions relative to matters depending before, or decided by, any zillah or city court; in all cases wherein the provincial courts are authorized to receive such petitions; and to proceed thereupon as the provincial courts are empowered to proceed; except that no final order shall be passed upon the subject of any such petition, until two or more judges be present; nor shall a single judge of the provincial court be deemed competent to pass a final and conclusive order in any case whatever."

" *Eighthly.* To correspond with the Governor General in Council, with the Sudder Dewanny Adawlut, with the other provincial courts of appeal, with the zillah and city courts, and generally with all public officers, in likemanner as the provincial courts are authorized to correspond with such public officers; and to perform all miscellaneous duties, arising out of such correspondence, or incident to the necessary discharge

'discharge of the usual functions of an officiating judge of a provincial court of appeal. Also to furnish the monthly and other periodical reports and accounts prescribed by the regulations; or required by the orders of Government, or of the court of Sudder Dewanny Adawlut."

Section V.
Powers vested in the officiating judge of a provincial court, for execution of duties stated in preceding Section.

§ V. " In the execution of the duties prescribed by the preceding section, a single judge of a provincial court or an acting judge appointed to officiate as such, when none of the judges of a provincial court may be present at the station where the court is held, shall possess the same powers as are vested by the regulations in the court collectively, subject to the several restrictions specified, and also to the further restriction noticed in the following section."

Section VI.
Restriction in commitment of witnesses to be tried for perjury.

§ VI. " In the event of any witness, who may be examined by a single judge of a provincial court, or by a person appointed to officiate as such, or by the registrar of the provincial court acting under the orders of a single judge, appearing to be guilty of perjury, so as to merit commitment for trial before the court of circuit, in pursuance of the provisions made by the regulations for that purpose; the judge may cause such witness to be held to bail, or if satisfactory bail be not given for his appearance at the first regular sitting of the provincial court, may cause him to be kept in custody until he can be brought before two or more judges of the provincial court; but shall not pass a final order, to commit the witness for trial on a charge of perjury, until the grounds of it shall have been submitted for the determination of a competent court."

Section VII.
Two, or more judges, of a provincial court, may re-examine witnesses, or examine other witnesses, or pass

§. VII. " THE powers vested by this regulation in a single judge of a provincial court of appeal shall not be construed to prevent the court at large, or any two judges of the court, from re-examining witnesses whose depositions may have

have been taken before a single judge, if it appear requisite; or from examining any other witnesses in the cause; or generally from passing any order that may appear proper, and consistent with the regulations, whether in addition to, or in qualification or abrogation of, any previous order of a single judge."

any order consistent with the regulations, notwithstanding previous orders of a single judge.

THE successive alterations made in the constitution of the courts of Sudder Dewanny Adawlut and Nizamut Adawlut, by Regulations X, 1805, and XV, 1807, have been already mentioned.* The only further provision, immediately connected with the powers of the Sudder Dewanny Adawlut, which has not been specified, is contained in Section X, Regulation I, 1806, whereby that court is "empowered to authorize and direct an occasional dispensation with the rule for periodical vacations of the provincial zillah, and city courts, contained in Section II, Regulation III, 1798, and Section XIII, Regulation VIII, 1805, in the instance of any particular court, wherein, from the arrear of business, or other cause, it may appear expedient that the vacations thereby provided for, or either of them, should not take place.† It may be proper however to notice that the Second Clause of Section VII, Regulation VIII, 1805, which enacts that "the limitation for appeals to the Sudder Dewanny Adawlut, in the cases of resistance of process provided for by Sections XXIII, XXV, and XXVI, Regulation III, 1803, shall be any amount exceeding five thousand sicca rupes, as provided, in similar cases by Sections XXIII, XXV, and XXVI, Regulation IV, 1803," has corrected an oversight in the standard for appeals to the Sudder Dewanny Adawlut, in cases

Alterations in the constitution of the Sudder Dewanny Adawlut and Nizamut Adawlut already noticed.

R. I. 1806.
§ X.
Court of Sudder Dewanny Adawlut empowered to direct a dispensation with the rule for annual vacations in particular instances, when it may appear expedient.

C. P. R. VIII, 1805.
§ VII. C. 2.
Governor directed the standard of appeals to Sudder Dewanny Adawlut, in cases of resistance to civil process, in the ceded provinces.

* In Pages 483 and 484.

† Section XIII, Regulation VIII, 1805, extends to the ceded and conquered provinces, the rule for annual vacations of the civil courts, at the periods of the *Dusseerah* and *Meburram* holidays, established for the other provinces by Section II, Regulation III, 1798; and cited in page 173, of this work.

of resistance to civil process; which was pointed out in a note to page 84 of this Analysis.

C. P. R. VIII,
1805
XXVII. C. 2.
A defect
supplied
respecting exemp-
tion of sum-
mary suits from
the institution
fee, in ceded
provinces.

THE Second Clause of Section XXVII, Regulation VIII, 1805, has also supplied a defect in Regulation XLIII, 1803, "for establishing fees on the institution and trial of suits," in the ceded provinces, by providing that "no institution fee shall be levied on suits instituted in the zillah courts under Regulation XXXII, 1803; (for preventing affrays;) nor on any suits whatever, in which the zillah courts, or the provincial courts of appeal, or the Sudder Dewanny Adawlut, may be empowered by the regulations to pass judgment on a summary process." *

R. XII, 1808.
Rules enacted
for the tempo-
rary adminis-
tration of civil
justice at Se-
rampore.

REGULATION XII, 1808, "to provide for the administration of civil and criminal justice at Serampore," has been already noticed. And the provisions in it which relate to the administration of criminal justice, and the police, have been stated at length. The following sections of this regulation con-

But an inaccuracy in the Third Clause of Section IV, Regulation XLIII, 1803, which directs the institution fee, in suits for malgozary land, in the ceded provinces, to be levied "on the amount of the annual *jumma* payable from the land to government," instead of the annual *produce* of the land, as made the standard in the other provinces by Section VIII, Regulation V, 1798, is still unrectified; as well as a similar mistake in Section V, Regulation XLIII, 1803, with respect to the exhibit fee in suits for malgozary land, "the annual *jumma* payable from which to government shall not exceed two hundred sicca rupees." The provisions in section XII, and the succeeding sections of Regulation XLIII, 1803, for the use of stamp paper in the ceded provinces, being restricted to pleadings in, or miscellaneous applications to, the civil courts; applications for the registry of deeds; copies of deeds furnished by the registers; copies of decrees of the civil courts; copies of papers furnished by the civil courts; *fannuds* to *cauzies* and *vakeels*; copies of proceedings in cases reported to the King in Council; and sundry complaints of petty offences; the declaration of the court of Sudder Dewanny Adawlut, on the 24th August 1804, which was noticed in page 159) concerning the receipts of pleaders for their fees, *Vakildar* fees, *Moktarnamahs*, security bonds, *Ikrarnamahs* and *Rahatnamahs*, as coming within the provisions for "money papers" and "law papers," in Sections III, and V, Regulation VII, 1800, must not be considered applicable to the ceded and conquered provinces.

tain the rules enacted for civil justice, which are to remain in force whilst the settlement of Serampore shall continue under the British Government.

§ II. "For the administration of civil and criminal justice to the European and native inhabitants of Serampore, there shall, as heretofore, be two separate and independent courts; to be denominated, respectively, the European court, and the cutcherry or native court."

Section II.
Two courts,
European and
Native.

§ III. "The European court shall be composed of a judge and magistrate; and of a recorder, or register; to be appointed to their respective offices by the Governor General in Council; and to be removable therefrom by his order only. Two European or Portuguese officers shall also be attached to the court, whose duty it shall be, as heretofore, to attest the proceedings of the court; and to verify them, when required, on oath. The requisite establishment of native officers shall also be attached to the court."

Section III.
Composition
and officers of
European
court.

§ IV. "The cutcherry, or native court, shall consist of a judge and magistrate, with an establishment of native officers. The judge and magistrate to be appointed by the Governor General in Council, and to be removable by his order only."

Section IV.
And of native
court.

§ V. "The European court, in its civil jurisdiction, shall take cognizance of all suits of a civil nature, between Europeans, the descendants of Europeans, and the descendants of native Christians commonly called Portuguese; or in which the defendant may be an European, the descendant of an European, or native Christian of the description above mentioned; provided, in all cases, that the parties sued be subject to the local jurisdiction of the court. With the exception stated in the following Section, the court shall be guided, in its pro-

Section V.
What suits cog-
nizable by the
European court.

By what laws
rules, and usages,
the court
is to be guided.

proceedings and decisions, by the laws, rules, and usages which were in force at Serampore, at the time of its coming into the possession of the British government. When the judge shall found his decision upon any law of Denmark, or upon any particular local rule or usage, he shall specify the same in his decree. All petitions and pleadings of the parties may be written at their option, in the Danish or English language; but in cases appealed to the commissioner, as hereafter provided, an English translation of all papers in the Danish language shall be made at the expense of the appellant (to be reimbursed by the respondent, if the judgment on the appeal be given in favor of the appellant), and shall be authenticated by the judge or register. And in all cases the proceedings, orders, and judgments of the court, shall be recorded in both the Danish and English languages."

And when to be specified in the decree.

In what language petitions and pleadings to be written.

Translation to be made in appealed cases.

Proceedings, orders, and judgments of the court to be recorded in Danish and English languages.

Section VI.
Protections of the Danish government not to exempt persons from being sued in courts at Serampore hereafter.

But in certain cases to have a retrospective operation in preventing personal imprisonment.

§ VI. " Protections and exemptions from suits granted by the Danish government, to persons who had taken refuge at Serampore, shall no longer have effect, in exempting such persons from being sued in the courts of Serampore, provided they are otherwise amenable to their jurisdiction. But in the event of a judgment being passed against any person who had received a protection from the Danish government, in respect of any sum of money or value due before the capture of Serampore, the judgment shall be executed by attachment and sale of the property of the defendant only, and not by imprisonment of his person; unless it shall clearly appear that he has been guilty of fraud toward his creditor, and has concealed or clandestinely disposed of property, which ought, in justice, to have been appropriated to the discharge of his debt; in which case, it shall be at the discretion of the court, on application from the plaintiff, and on his undertaking to pay the usual subsistence to the defendant, during his imprisonment, to confine the latter until the judgment passed against him be satisfied."

§ VII. " *First.* THE judgments of the European court shall be final to an amount or value not exceeding one hundred and fifty sicca rupees. Provided, however, it shall be competent to the commissioner at Serampore to admit a special appeal from any decree of the European court, which, on the face of it, may appear to be erroneous or unjust, or which from the nature of the case shall appear to be of sufficient importance to merit a further investigation in appeal, although within the amount specified in this clause."

Section VII.
In what suits the judgment of the European court to be final except in cases appearing to require a special appeal.

" *Second.* From all judgments and orders passed by the European court for an amount or value exceeding one hundred and fifty sicca rupees, an appeal shall lie to the commissioner at Serampore; provided, that the petition of appeal be preferred within three months after the judgment, or order, appealed from, shall have been passed; or if not preferred within this period, that sufficient reason for the delay be assigned to the satisfaction of the commissioner."

In what suits an appeal lies to the commissioner at Serampore.

Limitation of period for appeals.

§. VIII. " THE cutcherry or native court, in its civil jurisdiction, shall have cognizance of all causes of a civil nature between native parties, or in which a native of India (not of the description of native Christians mentioned in Section V,) may be the defendant; provided, that the parties sued be subject to the local jurisdiction of the court. With the exception stated in Section VI, (which is hereby declared equally applicable to the native and European courts) the court shall be guided in its proceedings and decisions by the laws, rules, and usages which were in force at Serampore, when it came into the possession of the British Government. When the judge shall found his decision upon any particular law, rule, or usage, he shall specify the same in his decree. All petitions and pleadings of the parties, as well as all proceedings and orders of the court, shall be in the Bengal or Persian language."

Section VIII.
What suits cognizable in the native court.

By what laws, rules, and usages, this court to be guided.

And when to specify the same in the decree.

In what language petitions and pleadings, proceedings and orders to be written.

Section IX.
Judgments of
native courts in
which suits are
not, and a
special appeal
be admitted.

§ IX. "*First.* The judgments of the native court shall be final to an amount or value not exceeding fifty sicca rupees. Provided however, that it shall be competent to the commissioner at Serampore to admit a special appeal from any decree of the native court, which, on the face of it, may appear erroneous or unjust; or which from the nature of the case shall appear to be of sufficient importance to merit a further investigation in appeal, although within the amount specified in this clause."

From what
judgment an
appeal lies to
the commissioner.

Limitation of
time for ap-
peals.

"*Second.* From all judgments and orders passed by the native court, for an amount or value exceeding fifty sicca rupees, an appeal shall lie to the commissioner at Serampore; provided that the petition of appeal be preferred within three months after the judgment, or order, appealed from, shall have been passed; or if not preferred within this period, that sufficient reason for the delay be assigned to the satisfaction of the commissioner."

Section X.
In what cases
an appeal from
the commissioner's
judgment
is open to the
Sudder Dewanny
Adawlut.

§ X. "*First.* In all cases of a civil nature, heard and determined by the commissioner at Serampore, whether in appeal from the European court, or from the native court, a further appeal shall lie from the judgment, or order, of the commissioner, to the court of Sudder Dewanny Adawlut established at Calcutta; provided that the amount or value adjudged against the party desiring to appeal, shall exceed the sum of five thousand sicca rupees; and that the petition of appeal be preferred within three months after the decree or order appealed from, shall have been passed; or if not preferred within this period, that sufficient reason for the delay be assigned to the satisfaction of the court of Sudder Dewanny Adawlut."

Time limited
for such ap-
peals.

Further provi-
sion for special
appeals to the
Sudder Dewanny
Adawlut.

"*Second.* It shall further be competent to the court of Sudder Dewanny Adawlut to admit a special appeal from any judgment

judgment or order passed by the commissioner at Serampore, although the amount or value adjudged may be less than five thousand sicca rupees ; if, on the face of the decree or order, it shall appear erroneous or unjust ; or if, from the nature of the case, as stated in the decree, or order, it shall appear of sufficient importance to merit a further investigation in appeal, although within the amount specified in the preceding clause."

§ XI. " THE provisions contained in this regulation for an appeal to the commissioner at Serampore, from decisions passed by the European and native civil courts at that settlement, and for a further appeal from the decisions of the commissioner to the court of Sudder Dewanny Adawlut, shall have a retrospective operation, with respect to all decisions in civil cases passed by the European and native courts, and by the commissioner, since the settlement of Serampore has been subjected to the authority of the British Government. But nothing in this regulation shall be understood to authorize an appeal in cases determined by the courts established at Serampore, before its subjection to the British authority ; without special cause assigned to the satisfaction of the court of Sudder Dewanny Adawlut ; which court is empowered to admit such appeals, in particular cases, if it appear necessary for the ends of justice ; but this discretionary power is to be exercised with caution ; and the appeal is not to be allowed in any case without satisfactory reason for its not having been before brought forward."

Section XI.
How far the provisions stated for appeals to the commissioner at Serampore and to the Sudder Dewanny Adawlut, are to have a retrospective operation.

XII. " *First* THE provisions contained in Sections IV, V, VI, VII, VIII, IX, X, XI, XII, and XIII, Regulation I, 1805, relative to appeals to the court of Sudder Dewanny Adawlut, from the decisions of the courts of civil justice established at Chandernagore and Chinsurah, and to the general authority of the Sudder Dewanny Adawlut over those courts, shall be considered applicable to all cases of appeal to the

Section XII.
Parts of Regulation I, 1805, declared applicable to appeals from the judgment of the commissioner at Serampore to the Sudder Dewanny Adawlut ; and to general authority of that court over the civil courts at Serampore.

court of Sudder Dewanny Adawlut from the judgments and orders of the commissioner at Serampore, as well as to the general authority of the Sudder Dewanny Adawlut over the courts of justice established at Serampore."

Commissioner at Serampore may frame rules of practice, and prescribe observance of them to the courts at Serampore, after obtaining approval of Sudder Dewanny Adawlut.

" *Second.* It shall further be competent to the commissioner at Serampore to frame such rules of practice as may be found most convenient for carrying into full effect the several provisions of this regulation; and after obtaining the approbation of the Sudder Dewanny Adawlut thereto, to prescribe an observance of the same to the European and native courts at Serampore."

Provisions of Regulation I, 1805 for appeals from civil courts at Chandernagore and Chinsurah, already stated.

Further provision made by Regulation II, 1808, "for the better security of the property of minors subject to the jurisdiction of the European court at Chandernagore."

THE provisions of Regulation I, 1805, "for empowering the court of Sudder Dewanny Adawlut to hear and determine appeals from the decisions of the courts of civil justice, established under the authority of the British Government, at Chandernagore and Chinsurah," were generally stated in the first part of this Analysis.* The civil laws of France, which were in force at Chandernagore before the capture of that settlement, and which were continued, under the regulation above mentioned, having extended the period of minority to the age of five and twenty years; whilst by the law now established in France, and throughout the French colonies, that period is limited to twenty one years; with a view to obviate this difference between the French inhabitants at Chandernagore, and their kindred in France, or in the French colonies, as well as to provide for other defects in the law and usage at Chandernagore, relative to the guardianship of minors, and employment of their property, the following rules were established for that settlement by Regulation II, 1808.

Section II.
Fixed period of majority.

§. II. "THE period of majority for Europeans, descendants of Europeans, and other persons, hitherto subject to the

* See pages 139 to 141.

civil laws of France at Chandernagore, is, for the future, fixed at the age of one and twenty years."

§ III. "ALL guardians (not parents) already appointed, and to be hereafter appointed, shall deliver in their accounts to the European court of justice at Chandernagore, once a year; namely, on the 1st of July, adjusted to the 30th of April preceding; specifying the whole amount of their receipts and disbursements on account of their wards, the balance in their hands, and the manner in which they have disposed of that balance."

*Section III.
Annual account
to be delivered
by guardians.*

§ IV. "UPON an application made on behalf of a minor, and after the circumstances stated in that application shall have been duly verified, the court of justice at Chandernagore shall be competent to call upon a guardian for his account at any shorter period."

*Section IV.
In what case the
guardian may
be called upon
for his account
at any shorter
period.*

§ V. "IMMOVABLE property now belonging, or which may in future belong, to minors, shall not be sold without the sanction of the court, or special directions in the will by which such property may be bequeathed. Capital engaged in trade or manufacture, or invested in good mortgages, which may at present belong, or which may in future be left, or come, to minors, shall continue to be so applied or invested, so long as the guardians, with the approbation of the court, shall deem such application or investment advantageous to the minors; but no guardian shall, without the permission of the court, engage the property of his ward in trade or manufacture; or dispose of it otherwise than in the purchase of public securities bearing interest; which shall be deposited as soon as purchased in the public treasury: and all balances of cash in the hands of guardians shall, as often as possible, be vested in the purchase of such securities."

*Section V.
Restriction on
the sale of im-
movable prop-
erty.*

*Rule for the
employment of
money in the
hands of guar-
dians.*

Section VI.
Accounts of
guardians deli-
vered to the
court not con-
clusive. Al-
ways open to
revision, and
impeachment.

§ VI. "THE periodical statements of accounts in the court of justice shall not be conclusive. The accounts of guardians, till the final settlement of them; according to the laws of France, shall always be open to revision and impeachment, upon proof of any error, or fraud."

Section VII.
Above rules not
applicable to
guardians ap-
pointed to chil-
dren by their
fathers, under
a will duly
made.

Fathers autho-
rised to make
such appoint-
ments.

And guardians
so appointed,
not to be called
to account, un-
less reasonable
ground appear.

But liable to
make good loss
to their wards,
and to be re-
moved, on
proof of gross
malversation.

§ VII. "THE above rules shall not be considered applica-
ble to guardians appointed by a father to his children by his
last will, duly made before a notary, or according to any other
form which is required by the law now in use at Chanderna-
gore, as essential to the validity of a will. Power is hereby
given to fathers to make such appointments by will; guardians
so appointed shall not be called to account during their ad-
ministration, unless a complaint be preferred on behalf of
the minor, and reasonable ground be made to appear to
the court; but in case of gross malversation established against
them, they shall not only be liable to make good any loss to
their wards, but may be removed from their offices by a de-
cree of the court."

SECTION III.

THE provisions contained in Regulation XV, 1793, "for fixing the rates of interest on past and future loans" in Berar, Bahar, and Oudha, were stated at length in a former part of this Analysis; * with a remark, that this regulation had not been extended to the province of Benares: though Regulation I, 1793, "to prevent fraud and injustice in conditional sales of land, under deeds of *Bye-bil-wuffa*, or other deeds of the same nature," had been declared to extend to that province. Regulation XVII, 1806, has since been enacted for extending to the province of Benares the rates of interest, on future loans, and provisions relative thereto, contained in Regulation XV, 1793;" as well as, "for a general extension (in all the provinces under the presidency of Fort William,) of the period fixed by Regulations I, 1793, and XXXIV, 1803, for the redemption of mortgages, and conditional sales of land, under deeds of *Bye-bil-wuffa*, *Kut-cubaleh*, or other similar designation." The justice and expediency of a legal provision, for the latter purpose, were suggested in a note to page 193 of this work. And in the preamble to Regulation XVII, 1806, it is stated to be " requisite, for the purpose of preventing improvident and injurious transfers of landed property, at an inadequate price, by the forfeiture of mortgages accompanied with a condition of sale to the mortgagee, if the amount advanced be not repaid within a stated period, (which description of mortgage is common throughout the country, under deeds of *bye-bil-wuffa*, *kut-cubaleh*, and other similar designations.) that an equitable provision should be made for allowing a redemption of the estate within a reasonable limited period, on payment

Provision in
Reg. XV, 1793,
for fixing the
rate of interest
on loans, before
noticed.

Extended to the
province of Be-
nares by Reg.
XVII, 1806.

With general
extension, in
all the provin-
ces, of period
for redemption
of mortgages,
with condition-
al sales of land.

Provision for the
redemption stated
in page 193
of Regulation
XVII, 1806.

* See Pages 185 to 188.

Rules enacted
for purposes
stated.

of the principal sum lent; with interest thereupon if the mortgagee shall not have been put in possession." The rules enacted for this purpose, and for extending the provisions of Regulation XV, 1793, with modifications, to the province of Benares, are, as follow.

9.

Section II.
Provisions of
Regulation XV,
1793, extended
to Benares,
with modifica-
tions.

§ II. "THE provisions contained in the several sections of Regulation XV, 1793, are hereby declared to extend to the province of Benares, from the commencement of the ensuing year 1807, A. C. corresponding with the 19th Poos of the Bengal year 1213, and 7th Poos of the Fulsly year 1214; subject to the following modifications."

Section III.
What interest
to be adjudged
if the cause of
action have aris-
en before the
period stated in
the preceding
section.

§ III. "INSTEAD of the limitations of interest specified in Sections II, and III, Regulation XV, 1793. if the cause of action shall have arisen before the period stated in the preceding section, the courts of civil judicature are to decree whatever rate of interest may have been voluntarily stipulated; or, if interest be payable in any case wherein a specific rate may not have been stipulated, according to the law and usage of the province; in conformity with the spirit of Section IX, Regulation VII, 1795; which directs, with respect to bills of exchange, receipts, or notes of hand, that the custom of the country is to be abided by; and with respect to dealings and money transactions amongst mahajins and shroffs, that the established customs observed, and enforced, amongst them, are to be adhered to by the courts in their inquiries and decisions."

Section IV.
Rate of interest
to be adjudged
after the period
specified in Sec-
tion II.

§ IV. "IF the cause of action shall arise after the period specified in Section II, of this regulation, the courts are not to decree any interest above the rate of one per cent per mensem; or twelve per cent per annum."

Section V.
Penalties in

§ V. "THE forfeiture of interest, for stipulation of a higher

er

er rate than what is authorized, enacted by Section VIII, Regulation XV, 1793, and the forfeiture of principal and interest, in cases of attempts to elude the prescribed rules, by deductions from the principal, or other devices, provided against by Section IX, Regulation XV, 1793, shall not be considered applicable to any loans actually and *bonâ fide* contracted, or to any bonds or other instruments voluntarily given for the evidence and security of such loans, previously to the period flat-
ed in Section II of this regulation."

Sections VIII, and IX, Regulation XV, 1793, not applicable to loans contracted, or engagements given, before the period flat-
ed in Section II.

§ VII. "THE rule contained in Section X, Regulation XV, 1793, for the redemption of mortgaged property whenever the principal sum lent, and the simple interest due thereupon, shall have been realized from the usufruct, is to be considered in force, throughout the province of Benares, from the commencement of the Fulliy year 1214; but shall not be applied retrospectively, in opposition to any subsisting engagement, voluntarily contracted before the period fixed for the operation of this regulation."

Section VI.
From what pre-
ceded the rule for
redemption of
mortgaged pro-
perty, in Sec-
tion X, Regu-
lation XV,
1793, to be re-
flected in Bena-
res.

§. VII. "IN addition to the provisions made in the provinces of Bengal, Behar, Orissa, and Benares, by Regulation I, 1793, and in the ceded and conquered provinces by Regulation XXXIV, 1803, for the redemption of mortgages and conditional sales of land, under deeds of *bye-bil-wuffa*, *Kut-cubaleh*, or any similar designation, it is hereby provided, that when the mortgagee may have obtained possession of the land, on execution of the mortgage deed, or at any time before a final foreclosure of the mortgage, the payment, or established tender, of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgage may not have been put in possession of the mortgaged property, the payment, or established tender, of the principal sum lent, with any interest due thereupon, shall entitle the mort-
gager

Section VII.
Further provi-
sion for the re-
demption of
mortgages and
conditional
sales of land,
under deeds of
bye-bil-wuffa,
Kut-cubaleh, or
any similar de-
signation, at
any time with-
in one year after
the mortgagee's
application to
the *sillah* or
city court, for
foreclosing the
mortgage, and
rendering the
sale conclusive

gager and owner of such property, or his legal representative, to the redemption of his property, before the mortgage is finally foreclosed, in the manner provided for in the following section; that is to say, at any time within one year (Bengal, Fuffily, or Willaity, according to the era current, where the mortgage may take place,) from and after the application of the mortgagee to the zillah, or city court of dewanny adawlut, for closing the mortgage, and rendering the sale conclusive, in conformity with Section VIII, of this regulation; provided that such payment, or tender, be clearly proved to have been made to the lender and mortgag e, or his legal representative; or that the amount due be deposited, within the time above specified, in the dewanny adawlut of the zillah, or city in which the mortgaged property may be situated; as allowed, for the security of the borrower and mortgager, in such cases, by Section II, Regulation I. 1793, and Section XII, Regulation XXXIV. 1803; the whole of the provisions contained in which sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this regulation."

Section VIII.
Mortgagee, or
holder of a deed
of mortgage
and conditional
sale, such as
described, how
to proceed,
when desirous
of foreclosing
the mortgage,
and rendering
the sale conclu-
sive.

§ VIII. WHENEVER the receiver or holder of a deed of mortgage and conditional sale, such as is described in the preamble and preceding sections of this regulation, may be desirous of foreclosing the mortgage and rendering the sale conclusive, on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower, or his representative,) apply, for that purpose, by a written petition to be presented by himself, or by one of the authorized vakeels of the court, to the judge of the zillah or city in which the mortgaged land, or other property, may be situated. The judge, on receiving such written application, shall cause the mortgager, or his legal representative, to be furnished,

Judge of the
zillah, or city
court, how to
proceed on re-

as possible, with a copy of it, and shall at the same time, notify to him, by a perwanah under his seal and official signature, that if he shall not redeem the property mortgaged, in the manner provided for by the foregoing section, within one year from the date of the notification, the mortgage will be finally foreclosed, and the conditional sale will become conclusive." *

receiving application for the purpose stated.

REGULATION XXXIV, 1803, " for determining the rate of interest on money, in the provinces ceded by the Nuwaub Vizier" is extended by Section XXIII, Regulation VIII, 1805, to the provinces ceded by Dowlut Rao Sendheea, and by the Peshwa, with the following modification. " The 30th of December, 1803, shall be the date to be adopted in the zillahs of Allyghur, Agra, and the northern and southern division of the zillah of Saharunpore; and the 16th of December, 1803, shall be the date to be adopted in the zillah of Bundelcund; in lieu of the date specified in Sections II, III, and IX, Regulation XXXIV, 1803. The 1st of January, 1806, shall be adopted in the whole of the above zillahs, in lieu of the date specified in Sections VII and VIII, of the said Regulation."

C. P. R. VIII, 1805, § XXIII, Extension of Regulation XXXIV, 1803, for determining the rate of interest on money, to the provinces ceded by Dowlut Rao Sendheea, and by the Peshwa, with alteration of dates.

THE rule of evidence respecting bonds, contained in Section XV, Regulation III, 1793, and extended to the province of Benares, with respect to bonds executed after the 1st July 1795, by Section IX, Regulation VII, 1795, (as noticed in page 188) was also re-enacted for the ceded and conquered provinces, by the third clause of Section VI, Regulation VIII, 1805, in the following terms. " The zillah courts are pro-

Rule of evidence respecting bonds, in Section XV, Regulation III, 1793, re-enacted for the ceded and conquered provinces, by Third Clause of Section VI, Regulation VIII, 1805.

* On the 27th of December 1807, the court of Sudder Dewanny Adawlut, in answer to a reference from the judge of zillah Midnapore, through the Calcutta provincial court, declared the construction of the above section to be, that it is applicable to all conditional sales, which may not have become conclusive, by the expiration of the stipulated period, before the time fixed in the preamble for this regulation to be in force; but not to any conditional sale, which had become conclusive before this regulation was in force.

hibited from decreeing the payment or satisfaction of any sum due on a tummafook, or bond, which may be entered into after the promulgation of this regulation, unless the bond shall be proved to have been executed in the presence of two credible witnesses; or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the court. But the restriction contained in this clause shall not extend to any bills of exchange, receipts, or notes of hand; in the determination on which the custom of the country shall be abided by."

Rule substituted for Regulation XV, 1793, by Section IX, Regulation XIV, 1805, in Cuttack, and three purgunnahs acquired in October 1803.

THE following rule has been substituted for Regulation XV, 1793, by Section IX, Regulation XIV, 1805, in Cuttack, and the three purgunnahs acquired with that district in October 1803.

" *First.* THE following rules shall be observed in the zillah of Cuttack, including the pergunnahs of Puttеспore, Kummardichour, and Bograe, respecting the payment of interest on money."

Interest to be adjudged if the cause of action have arisen before the 14th October 1803.

" *Second.* If the cause of action shall have arisen before the 14th of October 1803, the courts of civil judicature are not to decree a higher or lower rate of interest than the following; unless a lower rate of interest shall have been stipulated to be paid by the parties in the suit:—

" On sums not exceeding one hundred sicca rupees, two rupees and eight annas per mensem, or thirty per cent per annum.

" On sums exceeding one hundred sicca rupees, two per cent per mensem."

Or, if the cause of action have arisen on, or subsequent to

" *Third.* If the cause of action shall have arisen on, or subsequently to, the 14th of October 1803, the courts are

not

not to decree interest on any sum whatever above the rate of twelve per cent per annum."

the 14th October 1803.

" *Fourth.* THE courts are not to decree any interest whatever, in any case, where the bond, or instrument given for the security and evidence of the debt, shall have been granted on, or subsequently to, the 14th day of October 1803, and shall specify a higher rate of interest than is authorized in clause third of this section."

In what case no judgment for interest to be given.

" *Fifth.* NOR to decree any interest whatever in favor of the plaintiff in any case, where the cause of action shall have arisen on, or subsequently to, the 14th of October 1803, where a greater interest, than that which is authorized by this regulation, shall have been received or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment but for the dismissal of the suit, with costs to be paid by the plaintiff."

In what case no judgment to be given but for dismissal of the suit with costs.

" *Sixth.* IN cases of mortgages of real property, executed prior to the 14th of October 1803. in which the mortgagee may have had the usufruct of the mortgaged property (whether he shall have held it in his own possession or not,) the usufruct is to be allowed to the mortgagee, in lieu of interest, agreeably to the former custom of the country, (provided it shall have been so stipulated between the parties) until the abovementioned date; subsequently to which, the same interest is to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property, which have been entered into, on, or since that date, or that may be hereafter executed, as is allowed on all bonds, which have been, or may be granted on, or posterior to, such date, and no more; and all such mortgages are to be considered as

Rule to be observed with respect to mortgages of real property executed prior to, or since the 14th October 1803.

virtually

virtually and in effect cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, subsequent to the 14th day of October 1803, or otherwise liquidated by the mortgager."

Remark upon the last clause of the above rule; as not applicable to conditional sales of land, under deeds of Bye-bil-wuffa; or other deeds of the above nature.

THE last clause of the above rule corresponds exactly, (except in the date fixed for its operation) with Section X, Regulation XV, 1793; and in the Third Section of Regulation I, 1798, "to prevent fraud and injustice in conditional sales of land, under deeds of bye-bil-wuffa, or other deeds of the same nature;" it is declared, that such part of Section X, Regulation XV, 1793, "as directs, that the mortgages, therein referred to, are to be considered as cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this regulation, it is hereby declared not to apply thereto." Of course, this explanation applies equally to the Sixth Clause of Section IX, Regulation XIV, 1805; and under Section XI, of that regulation, whereby all regulations in force, upon matters of civil cognizance, in the provinces of Bengal, Behar, and Orissa, which are not inconsistent with the special provisions for Cuttack and its dependencies, are extended thereto, the provisions relative to conditional sales of land, in Regulation I, 1798, with those in Sections VII, and VIII, of Regulation XVII, 1806, must be considered in force throughout the zillah of Cuttack; as well as in pergunnahs Puttaspore, Kummardichour, and Bograe, annexed to zillah Midnapore.*

To

* The Supplement thus concluded brings down the First Part of this Analysis to the end of 1808; and the Second Part, which has been printed, includes the regulations for criminal justice, and the police, to the same period. The Volume containing the First and Second Parts, with this Supplement, as far as it has been accurately compiled, comprises therefore the whole of the legal provisions in force, which

Provisions in Regulation I, 1798, and Sections VII, VIII, of Regulation XVII, 1806, relative to such mortgages and conditional sales, in force for Cuttack, and three pergunnahs annexed to zillah Midnapore, as in Bengal and other Provinces.

To this conclusion of the judicial parts of an Elementary Analysis, undertaken (as stated in the Introduction) to facilitate the study and knowledge of the laws and regulations enacted by the Governor General in Council of the British possessions in India, and chiefly designed for the use of the students in the College of Fort William, may, with propriety, be subjoined the following resolutions of the Governor General in Council passed on the 3d February 1809, with a view to the improvement of the administration of justice in the territories immediately dependent upon the Presidency of Fort William.

Resolutions of Government passed on the 3d February 1809, with a view to the improvement of the administration of justice.

" *First.* THAT a professor of law be appointed for the instruction of the junior branch of the Company's servants in the principles of jurisprudence."

" *Second.* THAT the professor of the regulations be requested to commence a course of lectures on the regulations."†

" *Third.* THAT the servants of the Company, who on

which have immediate reference to the Judicial Department. With a view to render it more useful for reference, an Index is added to this Volume, instead of waiting for the concluding part to give a General Index, as proposed in the Note to page 213. Those however who make themselves familiar with the *Summary of Contents*, which states the principal subjects, in the order wherein they are respectively treated, will find little occasion for the Index; and, at all events, a preference of the Summary is recommended to those who may wish to study the Regulations for general, systematical, information of their provisions; which was the object intended to be promoted by this Work.

† Indispensable and increasing official duties making it impossible that I could undertake a course of lectures on the regulations, as proposed, I felt it incumbent on me to request the permission of Government to resign the office of Professor of the Regulations; that some other person, who could devote a sufficient portion of his time to render it efficient for the purpose intended, might be appointed to it. This has been done accordingly; and the most able instruction of the junior servants of the Company, in the principles and provisions of the regulations, may be expected from the knowledge and experience of Mr. CRISP. But the Governor General in Council having been pleased to express his satisfaction with my Analysis, as far as it has been executed; and his acceptance of an offer from me to prosecute it to a conclusion; I shall readily continue it during occasional vacations of court.

J. H. HARRINGTON

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quitting

quitting the College may make choice of, or be selected by government for, the judicial department, be attached to the Sudder Dewanny Adawlut and Nizamut Adawlut, until their services are actually required in the interior of the country."

" *Fourth.* THAT the offices of first and second assistant to the register of those courts, as at present constituted, be abolished."

" *Fifth.* THAT the assistants attached to the Sudder Dewanny Adawlut and Nizamut Adawlut be examined half yearly by the judges of the Sudder Dewanny Adawlut, jointly with the professor of the regulations, as to their knowledge of the regulations; and of the practical duties of registers, judges, and magistrates; and that the result be regularly reported to the Governor General in Council."

" *Sixth.* THAT those assistants be in like manner examined half yearly by the advocate general, jointly with the professor of law, as to their knowledge of the general principles of jurisprudence; and of the duties and powers of a justice of the peace; and that the result be reported to government."

" *Seventh.* THAT the Sudder Dewanny Adawlut and Nizamut Adawlut be requested to cause the reports, of the causes and trials adjudged by them, to be prepared with punctuality, by the assistants attached to those courts; to make a selection from the reports already prepared, for publication, without loss of time; and to cause a similar publication to be made periodically in future."

" *Eighth.* THAT the servants of the Company, who on quitting the College may enter on their course of service in the judicial department, rise only in that department; and that,
in

in like manner, those persons who may enter into the revenue department, rise only in that branch of the service."

UNDER the operation of the above resolutions it may be confidently expected, that the servants of the Company, to be employed in the Judicial Department, will carry with them, on their first appointment to the interior courts of judicature, in addition to competent proficiency in the languages of the country, obtained from their collegiate studies, a well grounded knowledge of the general principles of jurisprudence, and of the duties and powers of a justice of the peace; a perfect converfance with the laws and regulations enacted by the Governor General in Council for the civil government of the several provinces under this Presidency; and a practical acquaintance with the duties of registers, judges, and magistrates, which they are themselves called to perform on their entrance upon the public service. On the policy and expediency of an arrangement calculated to promote these objects, it cannot be necessary to enlarge. The importance of such qualifications to a due administration of the laws, by which more than forty millions of people are governed, and by which their rights are secured, is manifest; and the consequent public utility of any measures conducive to the attainment of them is indisputable.*

Concluding remark on the advantages to be expected from the operation of the preceding resolutions.

* In page 178 of this Analysis was exhibited a statement of the number of suits decided ~~by~~ final, dismissed for default, or adjusted by the parties, in the several civil courts of Bengal, Bahar, Oudha, and Benares, during the year 1804; and of the number of suits depending on the 1st January 1805. The following is a statement of the number of suits decided, dismissed, or adjusted, in the above provinces, and in the conquered and ceded provinces, during the three last years, 1806, 1807, and 1808.

COURT OF SUDDER DEWANNY ADAWLUT,

In 1806,	—	64
1807,	—	60
1808,	—	55.

PROVINCIAL COURTS OF APPEAL.

In 1806,	—	814
1807,	—	764
1808,	—	823.

ZILLAH AND CITY JUDGES.

In 1806,	—	11,173
1807,	—	10,038
1808,	—	9,489.

REGISTERS OF ZILLAH AND CITY COURTS.

In 1806,	—	8,171
1807,	—	7,457
1808,	—	7,870.

HEAD NATIVE COMMISSIONERS.

In 1806,	—	8,189
1807,	—	16,036
1808,	—	14,861.

OTHER NATIVE COMMISSIONERS.

In 1806,	—	2,25,802
1807,	—	1,98,270
1808,	—	1,94,931.

TOTAL OF SUITS DECIDED, DISMISSED, OR ADJUSTED.

In 1806,	—	2,54,213
1807,	—	2,32,625
1808,	—	2,28,029.

The number of original causes and appeals depending on the 1st January, 1809, was as follows :

In Sudder Dewanny Adawlut,	-	-	104
In Provincial Courts,	-	-	1,934
Before Zillah and City Judges,	-	-	21,234
Before Registers of Zillah and City Courts,			8,762
Before Head Native Commissioners,	-		8,101
Before other Native Commissioners,	-		91,958

Total of depending Suits	<u>1,32,093</u>
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